SELECTION

FROM

PAPERS ON INDEBTEDNESS AND LAND TRANSFER.

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The papers referred to in the Note on Indebtedness and Land Transfer will be found mainly in :—

The Report of the Deccan Riots Commission, 1876.

Selections from the Records of the Home Department, No. CLV.

Selections from the Records of the Financial Commissioner, Punjab, New Series, No. 11—37-LXI.

Selections from the Records of the Punjab Government, No. XIII, New Series (1876).

The Report of the Commission appointed to enquire into the working of the Deccan Agriculturists Relief Act (1892).

Also in the papers printed below, which contain a considerable part of the recent correspondence.

1.—Mr. Justice West's "The Land and the Law in India," 1872.

PREFACE.

The remarks contained in the following pages were originally intended to form part of an official paper. The writer having been invited by Sir W. Merewether to state his views on the subject to which they relate, desired that he might be put into possession of such materials as had already been collected by the Government of India. In the meantime he set down such observations as occurred to him, but before the opportunity arrived for putting these to their proposed use, his official position had been changed. The invitation given in virtue of the place he formerly filled could no longer operate as a reason or an excuse for presenting his views to the Government; but as his investigation rested in some respects on grounds not usually taken, he thought that he might render a service to the discussion of some questions of momentous importance, by laying them before the public.

Such being his motive the author can desire nothing more than that his opinions should be thoroughly sifted, and, if erroneous, refuted. The only credit he claims, is that of an honest endeavour to form a sound public opinion on the points of which he has treated, and an earnest hope that, whether agreeably to his own views or not, it may be formed aright.

The Land and the Law in India.

1. Thinking on the right exercise of the State's authority in India in giving or refusing to give effect to private obligations has brought different classes of thinkers to widely different conclusions. Some have arrived at a conviction that contracts ought not to be enforced at all, the regulation of men's mutual dealings being left to caution, conscience, and a sense of common benefit. Others have contended for a rigid enforcement of all promises as a necessary discipline and a means of giving to intelligence its proper weight in the social scale. Whether the State should interfere at all; on what principles; with what limitations; what property, if any, should be unavailable to creditors; what should be inalienable; what means of protection, temporary or permanent, the State should create or allow to be created; are all questions to which clear answers, appropriate to the people and their circumstances, should be obtained by a Government anxious to deal beneficially and consistently with the problems connected with the occupancy of the soil in this country. On the working of our laws as they stand, the Government of India has abundant information before it, but the teaching of the results actually realized may perhaps become clearer and more effectual if the facts are traced, as consequences to causes lying somewhat beyond the scope of what is usually called a practical inquiry. The social condition, the character and the ideas of the people, being derived in a great measure from primitive beliefs and traditions, once shared with them by kindred nations, some useful light may perhaps be drawn from a comparison of the institutions of each, as moulded by circumstances at times much alike for all, though at others strangely divergent. Analogy may thus do much, both in the way of explanation and of practical suggestion, that will have its use for the statesman who would adapt the best results of time to the needs of an essentially ancient society. At least if this end should not be gained, no harm can arise from a rather more abstract and discursive investigation than usual of a subject which in many of its bearings

has already been sufficiently sifted. To such enquiries the present one may possibly serve as an introduction.

2. The early history of society affords many indications that the binding force of bargains depended at first, not on any public sense of moral obligation, or of the national advantages of traffic and credit. Mutual interest prompted to transactions, and their efficacy, except in cases of immediate exchange, was secured by ceremonies which invoked the recognized deities as witnesses, and devoted to their wrath the contractor who failed to carry out his undertaking. It was probably as the guardian of the honour of tribal or national gods that the State first interfered to compel the performance of engagements, the institution thus resting, like that of individual property, on an ultimate basis of religious dread; but the repression of crimes of violence would naturally claim the first attention of an organized society, and from the investigation of such crimes, however rudely conducted, would gradually arise a habit of weighing the counter-claims of adversaries, one of whom strove to take by force what the other had promised, but withheld by fraud.

3. The sympathy with a person defrauded, which springs naturally from men's selfishness, must soon have been strengthened by a perception of the general advantages to the community arising from the possibility of depending upon a prompt and strict fulfilment of promises. The man endowed with a special gift for some useful pursuit, could thus devote himself to that alone, instead of wasting his powers on employments in which he could not excel. He could supply his neighbours with knives or pottery better than they could supply themselves, but would do so only if he could rely on obtaining the stipulated price in money or in kind. The division of labour, when once its benefits become manifest, assumes an almost sacred importance amongst primitive communities, and its maintenance obviously depends on the enforcement of contracts.

4. In times of dearth and calamity, the community must either see itself weakened by the loss of many of its members, or it must itself support them, or it must enable them, as far as possible, to obtain subsistence on credit. The last is the course which recommends itself wherever it is practicable. The wealthier members of the community lend of their abundance to the poorer, and to induce them to do this, the State enforces the sometimes very hard terms on which they insist. The harshness of these terms in a half-civilized community is no doubt excessive, but it is preferable to starvation; and when the further progress of the society makes this harshness repulsive to its moral sense, the poor obtain little or no credit when they most want it. The State then has to afford by the machinery of a poor law, or in some other way, the relief which its subjects at an earlier stage would have had to purchase by their own labour in temporary or permanent slavery.

5. In the intercommunication and mutual dependence which immediately grow up in an organized community, the capacity of individuals to perform the duties required from them by the State, must often depend on their obtaining the performance of obligations due by others to them. Such obligations, therefore, the State is interested in enforcing. It is interested, too, in a society of the Asiatic type, in encouraging loans of grain, in order that a produce may be realized, of which it will itself receive a share. At a further stage of progress, it finds its advantage in cultivating a general regard for the sacredness of engagements as a means of obtaining faithful service for itself,* and of furnishing a stimulus to the influx and accumulation of capital by which it indirectly profits.

* "Nec enim ulla res vehementius rempublicam continet quam fides, quae esse nulla potest nisi erit necessaria solutio rerum creditarum." (Cic. De Off., II, 24.)

6. When so many motives concur, it is not to be wondered at that every Government has been impelled in one way or another to lend its compulsive powers towards the enforcement of contracts. Theoretical writers in recent times have in some instances doubted the expediency of the State's interference in such a matter, and it appears that for a time the late General Jacob declined to allow suits for debt in the District of the Upper Sind Frontier; but there can be no doubt that the absence of a remedy against knavery is opposed to all economical principles, discourages accumulation, prevents money going to the quarters where it would be most useful, causes accommodation to cost an extravagant price, and leads to great waste of time in the contest of cunning and evasion. Evasion lapses readily into fraud; and fraud undermines all manliness of character, as plausible falsehood supersedes courage and simplicity. If a Government does not wish to foster the elements of crime and national baseness as well as poverty, it will compel the payment of debts, and the performance of contracts, by all means that do not bring about still greater mischiefs than those which it is sought to cure.

7. Such mischiefs, as history informs us, have actually arisen in many countries. They are especially apt to arise when a community is passing from a very low state of organization, to one of comparative complication and refinement. The agents and instruments of accumulating wealth acquired in such a state of things a continually increasing value. The pitiless rules and rude fictions which worked tolerably well in a medium of diffused stolidity and indifference to suffering, and where there was no great temptation to abuse them, are employed more unreservedly and more intolerably as cupidity and sensitiveness both attain a fuller development. In an expanding society, with abundant means of production spread out before it, every one can earn something beyond his own subsistence. He cannot in most communities readily quit the neighbourhood where he was brought up. The tremendous compulsion that may, according to primitive laws, be brought to bear upon him in case of necessity, leads the small capitalist to accommodate even a pauper with money and goods to an extent which would otherwise be ruinous to himself. The laws make it generally ruinous to the debtor. The creditor practically has the person of his debtor as a pledge for the debt, and, enjoying this advantage, is legally relieved from all that care and circumspection which morality, if not self-interest, ought to make him exercise. The phase of morality, however, is of late growth, which teaches men to abstain voluntarily from pushing to the utmost every advantage that they enjoy over those who are at once weak, ignorant, and, so far as they can be, dishonest. Until classes cease to be marked off by sharply defined boundaries, extortion is not checked by any controlling sense of ethical rights inherent in every fellow-being. Sympathy is almost confined to the members of one's own class; a high standard of action towards others is hardly dreamed of. Thus a rigorous law of debtor and creditor, absolutely necessary as it may be for the foundation of an orderly community, is very soon perverted into a means whereby cunning, without any aid from a higher faculty, sucks out the vitals of improvident strength and productive capacity. First it tempts into its snare, and then converts the fruits of its victim's life to its own sole benefit.

allows him. This he does. As it is uncertain how far he will himself be benefited by his labours, he works as little as he can. He wastes much time in sheer evasions; when at work he feels no wholesome interest in it. If stripped of his land or his implements he cannot work, his maintenance has in some form to be provided by the other members of the community. The sight of many men in this condition produces amongst their fellows an intense hatred of their creditors. It becomes a thing to glory in, almost a point of honour, to cheat and injure the odious class as far as may be. The law which gives the creditors tyrannical power, the rulers who execute it, share the feelings they inspire, and the end is a widespread and corroding political demoralization.

9. If, on the one hand, therefore, the State must needs lend its aid to the creditor as an essential condition of material progress, it must, on the other hand, assign bounds and conditions to this aid, without which it will probably become an instrument of social and political mischief. Where special circumstances have arisen to disturb in a marked degree the assumed equality of borrowers and lenders, of debtors and creditors, the relief of tenants, and of persons liable on mercantile instruments in France during the Prussian invasion, furnishes a recent and striking instance of the Government declining in the public interest to enforce contracts essential in ordinary times to the general well-being. Particular classes in England, supposed to be specially subject to imposition or unfair usage—as seamen and miners—are protected against disadvantageous bargains. The truth is recognized and acted on that there is no real equality, even of the roughest kind, between them and their employers. Still less can such an equality be assumed with safety in a community split up into sections, divided by the impassable barriers of caste and hereditary occupations. The extremes of astuteness and gullibility are thus fostered and brought into contact. The Brahman or Banya money-lender has no more sense of moral responsibility to check the full exercise of his legal rights against a Mussulman or a Hindu of a different caste, than the patrician creditor at Rome towards his plebeian debtor. The law does not allow the seizure of the debtor and his sale into slavery, or the division of his carcase amongst his creditor. If it did, a nexum as rigorous as the Roman would be entered into. That it does not; that the State refuses to enforce extreme penalties for failure to perform promises, implies that when and how it shall exercise compulsion, is a question of degree and of policy, determinable in each case by considerations of the general welfare. These make it expedient to facilitate and support transactions, but not at an extreme cost; and apart from these the State is under no moral obligation to enforce promises for the benefit of this class of capitalists. Against the claims of this class it must set its own prior and superior claim to the maintenance of its poorer subjects in a condition to be useful citizens; and their usefulness may often depend on their enjoyment of liberty and property, while it is not materially affected by some weakness under temptation to extravagance. Capital must be fostered; but there are other essential elements of national prosperity and safety, which must be fostered too.

10. Amongst the first if not the very first of these in an agriculturable country is a sound and beneficial relation of the mass of the people to the land. In England, as we know, this was slowly won, political influences having almost invariably worked towards the satisfaction of social necessities in a graduated moulding of the land law down even to our own day. The pressure on the land, however, the craving for its possession, has been so tempered by the continual expansion of commerce and manufactures, that the inherent stability of the institution connected with real property has never been subjected to a testing strain. In Ireland laws substantially the same have had to be subjected to a change quite inconsistent with their recognized theory, by giving to the farmer a partial proprietary interest in the soil that he tills.

Behind this theory itself, however, lies the paramount principle that landed property is in its very nature specially the subject of a plastic power in the State. Moveable capital has the properties of a liquid; any unequal pressure causes its almost immediate transfer to another place; but the land and things attached to it cannot be moved, and in proportion as the State's control over them is inevitable, it must in the long run be extensive. "Quant au droit de propriété loin qu'il soit absolu, il n'y en a jamais eu un plus variable plus subordonné. Il a été dans l'antiquité, dans le monde moderne, ce que la société a permis qu'il fût." It is the power of the State—in itself very variable—which forms the ultimate definition of its right; but the State itself, being pervaded by the current doctrines and prejudices of the community, is practically restrained in many directions, not only by its desire and perception of what will add to the material welfare of the people, but by sympathy with their most peculiar, which are also in general their most cherished, notions, their reverence for antiquity, their respect for possession, their sense of the sacredness of certain social arrangements, and of particular men and things. If the Government be a foreign one, it will be less subject to this last set of influences; but while it keeps in advance of the people in order to justify its own existence, it must not be stranger to their way of confronting the facts of life and society if it is to gain a genuine attachment, or to win its subjects to submission to its own dominant ideas. There must be action and reaction, the Government working towards definite ends yet recognizing the advantage, and Montesquieu suggests, of not seeking these by too abrupt a course, and stooping to make use of all the materials of tradition and prejudice that nature and history have furnished to

of his own family gods, and firm reliance on their power, looked with equal or almost equal dread towards those of his neighbours as potent for good or ill within their own sphere. He would not lightly trespass within the precincts of his neighbour's abode, or of his family tomb, where also an altar was commonly placed for the worship of the "Manes sepulti."

12. This protective capacity of the family gods having once gained recognition, it was natural that it should be extended. It seems probable that an enclosure round the tomb was the first landed property that was recognized beyond the sacred walls of the dwelling; but at a very early period particular spaces of ground, quite apart from tomb or dwelling, were, it is clear, consecrated to the use of a single family by ceremonies placing them under the special protection of its gods. The writings of classical antiquity are full of references to this notion, which in modified forms subsisted until heathenism was overthrown. The belt of land severing two neighbouring properties, over which no rights could be acquired, the violation of which was regarded as a sacrilege, is to be found equally in the Hindu as in the Roman institutes, and preserved by long tradition is now turned to purely practical uses in the rules of the Bombay Revenue Survey. The rustic god Sylvanus, who in Horace's *Ode* is credited with power to guard the crops against thieves and stray animals, is the antitype of many a rude image planted in a Deccan field, and assiduously worshipped as its protector. Sacrifices were till lately, and in some places still are, offered by the Maratha cultivators to the gods supposed to preside over the different sections of the village lands. The sacred procession of villagers decked with the sacrificial fillet, which Manu and Yajnavalkya prescribe as the means of settling a boundary, the highest amercement imposed on him who transgressed a boundary, point to exactly the same order of ideas prevailing amongst the primitive Hindus as amongst their Western brethren. The Buddhist prince in the Mahawanso marks out the confines of a temple with the plough much as Romulus traced the sacred pomœrium. The field once dedicated to one set of family deities was theirs, in the view of the family and of the neighbours, for ever. Wicked men might disregard the general respect for this appropriation; but as the Jewish law laid a curse on him who disturbed his neighbour's landmark, so the old Roman statute outlawed the man who had but touched a terminus.

13. The origin of property regarded as secluded against trespass is thus traced, with such clearness as the subject admits of, to the religious notions which appear to have possessed the minds of nearly the whole Indo-European race—to have almost exclusively possessed them—in the early dawn of primitive civilization. It was natural that, being thus regarded, the family lands should also be deemed inalienable. An Aryan freeman would have answered the sacrilegious proposal of a grasping superior with the same vehemence as Naboth: "The Lord forbid it me that I should give the inheritance of my fathers unto thee." The sale of land was positively forbidden in Sparta and many other ancient States; and the utmost amelioration allowed at Athens under the laws of Solon was that a man might part with his land if he would also renounce his citizenship. It is by the light of these indications that we should read that antique rule quoted in the Mitakshara which says that "in regard to the immoveable estate sale is not allowed." This law, as we know, was afterwards changed; but the primitive notion has not even yet lost all its influence. The law of equal partition so broke in upon the original sole succession of the eldest, as solely capable of performing the family rites, that the idea of complete inalienability could not be maintained; yet in the cumbrous ceremonies through which a transfer was to be effected we find a trace of the earlier state of things. The Roman mancipatio, a religious ceremony, was an analogous way out of the same difficulty. In Greece there could be no sale without a sacrifice.

14. We have come in these later days of the Christian dispensation to regard certain personal capacities of the individual man, notwithstanding their appreciable money value, and the possibility of placing them wholly at the service of another, as essentially *extra commercium* and inalienable. A man may not sell himself or his family into slavery. He may not, as in China, submit himself to a vicarious punishment for a money payment. The worth of the humblest citizen in the eye of our faith, and thence of our law, is too great to be thus made a subject of mere barter. Such a conception, natural as it now appears to us, would have seemed chimerical to the ancients. This may make us the more ready to believe that our conception of property as severable at will, or by order of a judge, from the person of a debtor, was to them full of difficulty. A voluntary alienation of land or house was allowed, but by degrees. Confiscation was a punishment reserved at first for those who for their crimes were driven into banishment, as amongst the Hindus for an outlawed Brahman. The execution of decrees against a debtor's realty was a thing not dreamed of. His property was deemed inseparable from his person and essential to his citizenship. Even the Roman laws of the twelve tables, though they placed the person of the debtor completely at his creditor's mercy when once the requisite formalities had been gone through, yet preserved his proprietorship of his land. Means were found to evade this saving principle; and when personal slavery for debt had been abolished, the device of severing the possession from the proprietorship placed all the beneficial interest in the land at the disposal of the creditor; but the mere necessity of resorting to these roundabout methods shows the strength of the antique feeling. The *Lar familiaris* still looked with disfavour upon any rupture of the tie that bound to his service a property once dedicated, the national gods, with jealousy upon every disturbance of the status of a citizen.

15. Such a disturbance was indeed attended with social and political mischiefs, which must under the Empire have often driven pious minds back upon the superstitions of an earlier period. When the small freeholders had all but disappeared, the truth became evident that "*Latifundia perdidere Italiam.*" The sturdy yeomen who had once replenished the Roman armies had been replaced by a spiritless host of slaves disqualified legally and morally for military service. The duties properly attaching to the occupation of the land had become impossible of performance under the uncontrolled working of an economic revolution, and there was no one who durst carry out Machiavel's principle that a State must be revivified by a periodical recurrence to the principles on which its institutions were first founded. The interest of the State in its domains has become almost equally obsolete in modern Europe, though once made the foundation of its political system. It is only amongst the Jews perhaps that one finds, besides, a power of temporary alienation, a definite and inevitable law providing, by the institution of the jubilee year, for the return at stated periods of every small estate, no matter how disposed of or encumbered, to the same family to which it had been attached in the original distribution of the promised land.

the Roman law a true transfer of the "dominium" was held impossible without the consent of the owner. The creditor might practise upon the superstitious fears of his debtor by sitting in dhurna at his door; might (somewhat after the Roman fashion) drag him before the public assembly, and then put him into confinement and make him work. But violence seems to have been regarded as inappropriate except in the case of clearly dishonest debtors. To all others the Hindu Law is singularly lenient. A respectable man is to be released on his promise, confirmed by an oath, that he will pay when he can; and for this purpose even a Sudra may be respectable. If a debtor is prevented by any calamity from paying punctually, he is to be constrained to pay only by small instalments as his means enable him. The proceeding to be adopted in the case of a very indigent debtor is one that contrasts strangely with British ideas. A further sum is to be taken from the creditor and advanced to the debtor, who, from the gains he is thus enabled to make, must pay both the old debt and the new. These provisions, resting on texts traced back to a remote antiquity, were not mere moral precepts, but a part of the living law of the Hindus at the time of the establishment of British ascendancy. Even confinement in jail for non-payment, as Mr. Steele remarks, was unknown under the Maratha Government, or even under that of Tippu. Of "attachment in execution" of a debtor's land there is no trace. The feeling of a permanent connection between a family and its estate, on which were founded the extraordinary privileges, as they seem to us, of the Mirásidar, still operated to prevent any enforced alienation of land, though the religious views in which that feeling originated had in the course of ages become dimmed or altogether forgotten. An extraordinary degree of efficacy seems to have been attached to dunning, in its various forms. The faith that is reposed in it is even now remarkably great, and it is practised to an extent and with a vigour that are hardly suspected until one grows somewhat familiar with Native life. It is in reliance on this, more even than on the action of the Courts, that such a vast quantity of money in India is continually lent out on personal security, which in any other country would be absolutely worthless. The debtor, subjected to this process, does not, as would a European, grow exasperated and contumacious. He accepts it as part of his fate, and by little and little usually pays up both principal and interest.

17. It would be almost inevitable that under a code of such extreme mildness as that of the Hindus, a good deal of improvidence in contracting debts should spring up. But it was in fact the same want of energy in the national character which produced carelessness in borrowing, which also kept the least rigorous of the old laws in vogue, and made strangely weak methods of recovery practically sufficient. Such a stamp of character, fostered in its weakness by centuries of indulgence, could not be shaken off in a generation at the building of a new set of rulers. To impose on such people the rule of punctual payment on the appointed day, with the alternative of law proceedings, costs, and eviction from house and land, was to condemn the mass of them to ruin. Traditional habits and needs, the voice of the small society which was their world, still impelled them to borrow. The money-lender grew accommodating in the enjoyment of new means of enforcing payment. His expectation in many cases was the odious one that the contract would not be fulfilled. The tremendous penalty of eviction was but half-realized, or not realized at all, by the ignorant landholders. Vague and confused in all their notions of time, a few years forward seemed to them indefinitely distant; they indulged in the groundless hopes with which sanguine weakness excuses its improvidence. The ground of mutual benefit on which the respect for contracts rests could not subsist between classes thus related. "*Ita primo concursatio et preces: dein strepere prætoris tribunal; eaque quæ remedio quæsito, vendidio et emptio, in*

contrarium mutari." The pregnant words of Tacitus are for some parts of the country a literal description of the embarrassed landholders of India. They are in many districts getting every day more deeply involved, and are rapidly losing their paternal acres without losing their attachment to them, without having acquired other means of gaining a subsistence, without the notion drawn from the far fountains of their faith, of the iniquity involved in severing a man from his household gods, having been replaced in them or their neighbours by the latest teachings of political philosophy. It would have been well if the principles of self-reliance and unqualified responsibility could have been instilled by some process less fatal. It is like throwing them into deep water to make them learn to swim. History teaches that in all nations growing up in a course of spontaneous development, a change of institutions follows regularly on a change in the dominant ideas of the people. In this way the new blends itself imperceptibly with the old, and the law is a mirror of the varying aims and needs that it has had to satisfy. Thus healthily evolved, it re-acts healthily on the tendencies from which it has sprung, and affords at each stage a fresh starting-point for some new advance of the ethical or political standard. Without saying that such a course as this is possible in India under the British rule, one may yet say that the circumstances which make it difficult or impossible ought to be profoundly studied; that the results should greatly control our application to this country of abstract theories or empirical laws gathered in a wholly different field; and that as our institutions are the outgrowth of our special character, we should, before introducing any one of them that must largely affect the condition of the people, draw the popular mind in some measure within our own sphere of thought on that particular subject. No polity can be enduring which does not find room within it for the national virtues and defects; and while we are striving to improve the moral and intellectual tone of the Hindus by the infusion of new and wholesome ideas, we ought in some things to wait patiently for their fruition. If our superciliousness prevents our doing this, we may often plume ourselves on some mechanical success when we have in truth been sowing the seeds of political disaster and of a dissolution of society.

18. The rise of the great and eventually absorbing interest of the State in the active life and the property of the citizens in an ancient community was closely connected with the growth and development of the religious theory. First the family expanded to a clan, as unattached adventurers sought admission to the patronage and to the sacra of some house whose success made manifest the power of its guardian deities. The clan by an analogous process became a tribe, and the tribe a city or a nation. The nascent state was always placed under the protection of some deity specially propitious to the founder. A colony took with it a portion of the sacred fire from the national altar, and a branch of the founder's family to minister thereto. Before Salamis or Veii could be conquered, their local gods had first to be won over by prayers and promises. When they could not thus be persuaded to change sides, or constrained by the utterance of some coercive formula, they had to be subdued by the superior might of the victor's gods. They fled from the land they could not protect: its sacred things became profane, its dedication was undone. The way was thus opened for a fresh dedication, new auspices, new rites; but it was the community only, which had triumphed with the aid of the national divinities, that could appropriate the conquest or extend its own frontier. Hence, as the State increased its area, the bulk of the land came to be held by the burgesses as a great fief in the city, a great homage in which none could participate who were not full citizens through partaking in the national sacra. For the stranger there were no legal rights, no capacity for property. The citizen himself held it subject to national institutions, not only by his personal service, but by contributions from the produce of his lands. A State so pro-

prietor could be fined for negligence in the cultivation of his own fields, as under the Hindu system he might have to make good tenfold the loss occasioned by a similar carelessness. The numerous Agrarian laws were repeated assertions of the State's paramount title to the land. When this was parted with, as to the allotment made to the poorer citizens under the Sempronian law, incumbrances forthwith began to gather round these small properties. For the relief of the owners they were made alienable, and then passed rapidly again into the hands of the wealthier class.

10. When so many resemblances on other points are found to have existed between the primitive institutions of the Hindus and those of their brother members of the Aryan race, it is at least highly probable that the notion of the State's paramount title to the soil was developed in much the same way amongst them as amongst the Greeks and Romans. The power of the kings, well established as we must suppose before the great masses of the Brahmanic people could be put into concerted movement, underwent amongst them an entirely different series of changes from those to which it was subjected in Europe. In the beginning there is some evidence that their Princes, like the βασιλεις ἱεροὶ of the West, held their political power as an incident or attribute of their position as the religious chiefs of the communities. "The early Rajas," Mr. Wheeler says, "were their own priests," and then he adds, "that the Heroic age of Hindu history was eminently an age of sacrifice." Exactly what we find in Homer and Virgil, and indeed in Livy too. The development of the caste system deposed the kings from this position. The priestly class, who were appointed their purohits or pontiffs, became in time the sole depositaries of the sacred formulæ, and alone able to conduct the most important ceremonies with the punctiliousness of detail, failing which the anger of the gods would be aroused by the very sacrifices intended to draw down their blessings. But the ambition of the Brahmans does not seem to have extended to the usurpation of the active political functions of royalty. The traces of the king's priestly character have nearly been blotted out from the existing records under the manipulation of the sole learned caste, but his political power is exalted in extravagant terms. The idea of shaking it off seems never to have been awakened amongst the Indian peoples, as in the small and close-packed communities of Greece and Rome. The peculiar course of development taken by the religious theory was all against such a revolution. Hence the idea came down to modern days that the land is a "protective property successively held by powerful conquerors, and not by subjects cultivating the soil." The Hindu lawyers have not thought it inconsistent with this that "the cultivator has a subordinate usufructuary property, not a royal property." The title of the subject arising from mere occupancy, independently of the sovereign's sanction, on which modern lawyers have expended so much discussion, is summarily dismissed by Jagannátha, whose work Mr. Colebrooke translated; but the king having assented to a subordinate property, "such property is created as is described by the terms of his assent." Thus "though the subject's property in the soil is weaker than the king's ..... it is founded on the reason of the law and on settled usage." This is a rational and consistent system. It preserves to the sovereign generally an interest in the land, not to be defeated, as Manu and Yajnaválkya say, by any prescription, but not to be extended, even by a conqueror, so as to deprive the landowner, who is really such, of his subordinate property.

20. According to this theory the king must remain superior owner everywhere except where he has distinctly granted away his rights. He cannot with propriety even part with these rights to any considerable extent, for "without (his) property in the soil," as Jagannátha says, "there can be no certain rule for the protection of the subjects." Even where a true proprietor-

ship has been granted, the protective title of the king is not annihilated, and his title extends to a share of the produce in the case of such holdings as those on the Mirási tenure. This necessarily involves power to dispose of the land in the event of the Mirásidar's absence or incapacity so as to prevent loss to the revenue. The appropriation of pasture lands by a village community Yajnaválkya makes dependent on the monarch's will. Though alienation is allowed, the assent of the king is essential to its validity (Colebrooke's Dig., B. II., C. IV., Sec. II., T. 33, and Mitakshara, Ch. I., Sec. I., paragraph 31). The word "Sámanta," translated "neighbours," should, Mr. Ellis thought, have been rendered king or lord, and in this sense Jagannátha has taken it Jagannátha commenting on the text—"All subjects are dependent; the king alone is free," says—"therefore it is proper that they should make gifts or sales with his assent." Property again "consists not in the right of alienating at pleasure." Hence though "the cultivator is not destitute of ownership," as some would infer, his ownership is a qualified one, and, being subordinate to that of the king, cannot be transferred without his consent. Practice on this point has been conformable to the principles laid down by the native lawyers. Mr. Ellis shows that in Malabar, "where the proprietary right of the subject is probably better defined than in any part of India," the established form of transfer before the introduction of the British rule contained the formula "in the presence of the rulers of the land," or something equivalent, as an essential part of the conveyance.

21. The power of the State over the disposal of land being so extensive

22. Suppose that either of these principles had been followed out in dealing with the question of interest on debts, it is probable that many serious evils would have been avoided. The usury laws of England were no doubt founded on a mistaken prejudice and an economical heresy; yet in settling a maximum legal rate of interest, they set up a standard, and gave fixity to men's vague ideas of what might reasonably be asked for the use of money in those numerous cases in which the loan partook but slightly of the character of a true mercantile transaction. In the commercial development of recent times such cases are becoming rarer in proportion to those wherein the loan is taken in perfect independence, and without any sense of obligation on either side; but at an earlier stage borrowing at interest in England, as elsewhere, was generally an appeal of helplessness to avarice. It was well in such circumstances that the spirit of unlimited exaction should be kept somewhat in check by the dread of legal penalties, as well as of popular censure, and that the Courts, so far as they could, should give relief by undoing all that had been ingeniously done to defeat the law. There are few who will deny that the India we have now to deal with is much more like that earlier England than the England of to-day. The typical borrower in India is in no position, financially or intellectually, to contract a loan on terms regulated by the calculations of an actuary or a banker. The typical lender reproduces young Ralph Nickleby with his simple rule of "twopence for every halfpenny." The rule of "Laissez faire" applied to such parties operates simply as a license to extortion. It is liberty to the fly to entangle itself in the spider's web.

23. But the same lesson was even more effectively to be gathered, had instruction been wanted, from the Native practice. The Hindu Law nowhere manifests that repugnance to the taking of interest which we, or at least our grandfathers, inherited from Rome and the old Testament; but the rule of "dámdúpat," applying to nearly all loans of money, imposed a limit which at least sometimes kept extortion within tolerable bounds. The practice that grew up at least in the Deccan is stated in Steele's Laws and Customs: "Panchâyats award a sum according to the debtor's circumstances, either taking off the interest of a particular period, or reducing it to 1 or 2 per cent., or striking off the excess of double the amount of principal, and decree that it shall be recovered by instalments. In case of poverty, the principal only or a part of it is accepted by the creditor." The payment of what was awarded, was enforced as we have seen by measures of great leniency.* In the days when India was governed by Regulations, it was thought a proper course to limit the interest recoverable in a Court to 12 per cent., and few or no complaints were ever made that this rule unfairly hampered a mercantile nation in the inter-dependent arrangements of a system of credit. The passing of Act XXVIII of 1855 was a mere adoption of an English doctrine supposed to have been proved correct by impregnable reasoning. In the circumstances assumed as data this was so; for India perhaps the maintenance of the limitation, or a still closer approximation to the native practice by giving to the Courts an extended discretion to deal with interest, would have been a more politic course to follow, until its people had acquired the capacities of a self-asserting and intelligent mercantile community. At least this would probably have been best as to debts of small amount, the larger transactions being left to the operation of supply and demand.

24. To take another instance in which the hasty and unqualified adoption of a recent theory may be attended with enormous mischiefs as compared with what a close study either of Native India or of historical England would

* Grote (Appendix to the 11th Chapter of his History of Greece) supported by Sartorius, shows that a great distinction was made by the Roman Law after the abolition of the "Nexi Obligatio" by the Lex Poetelia (B.C. 324 Law contained in all the stringency for enforcing payment of the principal, while it was grounded as to the interest.

suggest. The allodial proprietor amongst the English before the conquest, the very type of an absolute owner, was yet subject universally to the three burdens of bridges, forts, and service against an enemy. When defeat and subjugation had reduced the military spirit of the people, the feudal policy of the Conqueror and his successors provided carefully that every portion of the land should be occupied by some Norman warrior bound and prepared to defend what he held as he had won it. Then came the rapid and elastic uprising of the mass of the people to a military equality with their masters; then their political equality; and, parallel with this movement, the growth of commerce and manufactures, leading finally to the wide application of an almost purely economic standard to the determination of State problems. But it must be remembered that while the Normans were the efficient fighting men of the nation, the land was not allowed to pass away from their hands. It was only as the land was relieved of its duties to the State that the State became indifferent who occupied it, and on what terms. In England there has for long been no fighting caste or rather the fighting caste has embraced the whole community. The distribution of the land, therefore, on purely economic principles, has wrought no mischief beyond what may be portended by the sullen murmurs that are now rising from the landless class. But how is it in India? The Rajput or Maratha yeomen disappearing or sinking into indigence and despair are replaced, as the Roman freeholders were, by a class of mere cultivators living from hand to mouth, without strong local attachments, or the sturdiness which independence gives. Above these come the new race of capitalists: men possessed by no ennobling ideas of public duty, cowards as a rule by caste and confession, citizens in no sense beyond that of benefiting society by selfish accumulation. A country with such a class of landlords must soon afford a caricature that should rather startle the advocates of economies and self-adjustment as the sole or chief basis of polity. A true self-adjustment there cannot be however in a society so governed. If there were, the strong would soon take back by force what the weak had won by astuteness, and the land would once more be held by men prepared to guard their possessions. This of course is not to be tolerated; but are we to forget caste and character, and all the conditions of Native society until we have laboriously reduced it everywhere to a state of unstable equilibrium? In a time of trial we may need the support of the courage and home-love of the hereditary landholder, of the loyalty that springs from a diffused content. There is some room to fear that we might have at such a time to support tottering institutions with British bayonets that were all, and more than all, required elsewhere.

intelligence out into the country; and competition will then bring down interest, whatever form it may assume, to its natural rate. These considerations are of very considerable weight, and when transactions can be supposed to have been of the kind to which economic principles really apply, ought to determine the policy of Government. When that is not the case, the Government should decline to lend its aid to give effect to extortionate dealings. The Courts already decline to enforce contracts entered into between parties, one of whom, through some previous transaction, holds ruin *in terrorem* over the other in order to extort some further unfair advantage. The new Contract Act provides that a person suing for the breach of a contract shall receive, not all that in any case he has stipulated for, but "reasonable compensation not exceeding the amount so named." Borrowers of small sums so much oftener stand in a suppliant than in an independent relation to the lenders, that the legislature might well apply a corresponding principle distinctly to their case. Puffendorf says very reasonably that "the law of nature seems not to afford any ground for the distinction, taken by some, that by an engagement *to give*, a man is obliged to give precisely] (what he has promised), while by an engagement *to do*, he is not obliged thus precisely to the specific act, but may be freed by a commutation" (B. III., Chapter vii, 4). In the case of all obligations for a principal of not more than Rupees 500, the Courts should have full power to treat any interest in excess of 9 per cent. as simply penal, and to cut it down to such rate as should under the circumstances seem just. This would afford an immediate and sensible relief to the class who are really victimized by the money-lenders. Transactions for sums of above Rupees 500 are nearly always entered into by people who are able to form an intelligent judgment for themselves, and the amounts are large enough to bring wealthy and respectable men into the market as lenders. It is needless, and would probably be useless, to attempt to supersede the ordinary law of supply and demand in these cases. Compound interest should be disallowed, consistent as it is with sound commercial principles, in order to make it a disadvantage to creditors to leave obligations unsettled until the debtors are involved beyond redemption.

26. There is an apparent extension of this principle which at first sight has some attractions. "Look," it may be said, "not only at the document actually sued on; but trace the transactions which have led to it back to their origin, and award no more than such an investigation shows to be just." The answer to this is that it would involve the Courts in an almost endless series of enquiries, which they could not possibly carry out with success. It is hard enough to determine in many cases whether the single transaction sued on is established or not; to go behind it would be to commit the result altogether to chance, cunning, and hard swearing. There is a vast difference, too, between the moral effects of reducing interest to an equitable rate, and allowing an obligor to shirk his responsibility as such altogether. Money-lenders, too, would never know how they were situated, could not replenish their capital by loans made on a precise estimate of their assets, and would soon learn to elude the law by bandying the debtor between two or more of their class, so as to have a fresh creditor for each renewal of the obligation. These objections seem to be conclusive against such a proposal; and the debtor could not reasonably claim any further relief than would be afforded by the measures to be suggested further on.

27. The first and most important of these is a definite limitation of the power to alienate land. The Government has for the most part divested itself of that exclusive ownership which arose from the gradual increase in its demands under the native rulers; but it still has that "protective ownership" without the assertion of which, according to the Hindu lawyers, "there can

be no certain rule for the protection of the subjects." It is bound too on every occasion to do that which will best promote the general welfare; and finding that the principle of free trade in land, which it adopted from the best motives, is not adapted to the present condition of the people, it may properly impose such limitations on its further application as experience has suggested. The Government should pronounce all land held from it to be either inalienable, except with its assent, or else subject on alienation to a reassessment, and to the levy of a nuzr-rent for the benefit of the community. This principle once adopted, or revived, the Government would then lay down subordinate rules for the guidance of the Collectors or other local officers, who should have delegated power in general to sanction transfers under circumstances that made them obviously expedient. A holding exceeding in extent to what was necessary for the comfortable maintenance of the family, or families, its tenants would be made freely alienable as to such excess. Such excess, and such only, should be liable to attachment and sale in execution of decrees. The crops, and the cattle and implements requisite for working the regulated minimum holding, should be as exempt as the land itself from attachment, and so in most cases should the cultivator's dwelling.

28. The working of the plan would be this: A ryot desirous of selling or incumbering his holding would make an application jointly with the proposed purchaser for permission to do so. As to the excess above a certain quantity the Collector would immediately grant permission: as to the minimum, he would carefully consider the circumstances and allow or disallow the sale. He would generally refuse to permit the splitting up of a small holding unless something had given it an exceptionally high value. Where there was any indication of the cultivator being imposed on, or unduly pressed, he would refuse his sanction altogether. Thus the ryots would be kept on their lands, except when it was plainly advantageous that they should transfer them, while changes of proprietors would not be prevented in proper cases. Orders for the execution of decrees against land should be sent to the Collector, and should be carried out only against land held in excess of the minimum.

29. It might seem at first sight that there is an essential difference between the case of the man who has voluntarily sold his land, and that of him against whom a money decree has to be executed. But, on a closer examination, this difference fades away. The creditor who has obtained a decree must be allowed to use such coercion as will generally serve to make it effectual if the debtor has any means of satisfying it, and this same degree of pressure will make the landholder sell his land. The distinction, moreover, if embodied in the law, would immediately give rise to a class of transactions, of which the Roman law affords an exact precedent, by which the landholder would sell his property to the money-lender, on a secret promise by the latter to restore it on repayment of the purchase money with interest. To deal with the matter effectively, the Government must deal with it boldly, and so as to prevent all evasion.

30. Native ideas, which are opposed to a sale of family property, are not unfavourable to temporary mortgages. But an unlimited power of mortgaging is virtually equivalent to an unlimited power of sale, and should be subjected to equal restraints. A mortgage is enforced by foreclosure; and if sales were restricted, and mortgages not, the end would be attained by a mortgage and a friendly suit. The device would be specially resorted to in order to destroy the rights which Hindu children acquire on the birth, or to make their assertion practically impossible. A mortgage with possession for a limited time, at the end of which the property is to be reconveyed on having paid off principal and interest, retains the land as a provision for the family; but if it be extended to a considerable portion of the

estate, it has probably plunged the mortgagor into debt, and made a fresh mortgage necessary immediately on the lands being freed from the old one. A mortgage with possession and enjoyment of the produce as an equivalent for interest alone might keep the mortgagor out of possession all his life, through his inability to pay off the principal. A rule might be made allowing mortgages with possession to be made at will, but limiting the lien on the land to a prescribed number of years, after which the amount of the loan, if not discharged by the terms of the transaction, should become a mere money debt; but this would have the effect in many cases of starting young men in life without resources or fitting employment. When, on the expiration of the mortgage made by their father, they came into possession, they would probably be loaded with debt and obliged to mortgage again. Upon the whole it seems that the best plan would be to subject mortgages and charges on the land to the same rules of sanction as sales.

31. Leases can be so contrived as to keep a family out of its property as effectually as sales or mortgages. A long lease, or one defeasible only on some improbable condition, ought therefore to be subject to the same rule as a sale of land. On the other hand, sickness or some other casualty may often render it desirable that even the smallest landholder should let his land for one or two years. All leases for more than one year might be made subject to the Collector's approval. Tenancies from year to year should be allowed without the necessity for sanction. They should be registered by the village officers for a small fee, and should not enable the tenant to retain possession against his landlord who desired to re-enter at the close of any cultivating season. This would prevent a good deal of vexatious litigation, and the setting up of titles in opposition to the title of the landlord. The English theory on this point which gives so great an advantage to the physical possession is attended with some benefits, but it should not be applied to cases in which the official record of the letting left no doubt of the landlord's title.

32. In thus working out in detail the principle of the Government's inalienable protective interest in the land, the question would probably arise of how those creditors were to be dealt with who, though in advancing money to a ryot they had not obtained any actual lien on his estate, yet had naturally taken his property into consideration in lending him money or seed. "We had a right to reckon," they might say, "on a fund, as available for the satisfaction of our claims, of which this protective policy deprives us." The answer should be—"Yes, you had a right, that is a reasonable ground for reckoning on the availableness of this fund, but you had not a right in any sense that involved a corresponding duty on the part of the Government. The existing law as to the liability of land for debt, on the permanence of which you perhaps based your calculations, was nevertheless, like any other law, subject to change at the will of the legislature. All that you could claim as members of the community was that it should not be changed capriciously; but no such charge has been made." The matter depends on the distinction between an expectation and a right; and where a positive right over land had been acquired under the existing law, it should be respected and preserved.

33. In dealing with the general law as to the alienability of lands the important collateral question of the rights and powers of the separate members of joint village communities, and of joint families, ought to be disposed of. The ancient law of submission to the elder has long been superseded by that of equal rights vested in every male member of a Hindu family. But whether each member may dispose of his own share, or whether the assent of the whole family is necessary to constitute a legal disposition, has been differently decided by the lawyers of different schools. The view taken by the authorities recognized at this side of India, and the one most

consonant to the religious basis of the family, is that all hold as it were "*per tout et non per my*;" and that all must unite to effect a valid disposition. The modern united family, with its elected or recognized manager, stands in the place of the ancient family, essentially inseparable, with its lands inalienable, except small portions by way of charitable endowment, and its manager designated by nature. Into such a body a stranger cannot be thrust without a kind of sacrilege. A casual purchaser of a share of a house may be of a caste such that his presence will necessarily exclude all the other sharers. From this has flowed the rule, widely prevalent amongst the joint-proprietary bodies, that no one can be admitted as a sharer without the consent of all. These bodies, and the joint-family, have no doubt become rather obstructive in this generation. They probably will not long resist the disintegrating influences that are working on them. But so long as they do subsist, and are recognized, whilst the single sharer desirous of setting up in independence should be allowed to obtain a partition, a stranger should not have execution against the common property, except for the appraised value of his debtor's share, to be realized by the sale (subject to the limitations already proposed) of a definite and separable portion of the estate.

34. As population goes on increasing under the joint operation of native marriage institutions and the peace and security afforded by the British rule, the waste lands in many parts of the country are becoming scarce and poor. A united family may occupy a very small holding and yet there may be no other land available within a moderate distance. If one of three brothers, A, B, and C, now claims a partition, his share will be too small for the maintenance of a family. Permission would soon be sought, and would have to be given, for a sale of it. The same result would follow after a certain time with regard to the two-thirds retained by the remaining brothers. Thus in many cases that complete alienation of the land would be brought about which it would be the policy of Government to restrain. How ought such cases to be dealt with? The multiplication of the species is practically beyond the control of the Government. What it can do is to prevent that multiplication from leading to an infinite sub-division of the land held by the poorer cultivators, and thus to their forced withdrawal. In a suit for a partition, a division in specie into fragments individually smaller than the recognized minimum requisite for the support of a family ought not to be permitted. Instead of it, the plaintiff and his opponent should each be called on to place in the hands of the Court his private estimate of the value of the whole property. The highest bidder or bidders should receive the property, the others receiving from him their shares of its valuation according to an estimate higher than their own. Some sharers would thus be ousted; but it would be *some* in most cases, instead of *all*, who would have eventually to go out if no provision were made: and those who remained in, would preserve the hereditary connexion of the family with its lands. In case no member could produce the money to buy out the others, the whole property should be sold and the proceeds distributed. This would apparently be a harsh measure; but there is a degree of indigence below which people cannot be landowners with any benefit to themselves or to society; and the knowledge that a sale would take place would prevent suits for partition whenever any reasonable voluntary arrangement could be made amongst the members. These would all know that their common interest was involved in having the land, which creditors could not attach, rather than the sale proceeds which they could.

35. Above the class we have been considering comes that of the zemindars holding lands which they sublet in farms either to hereditary or to casual tenants, retaining only a small portion of their estates in their own hands. They vary as to pecuniary means from a condition of great property to one of

affluence. Many of the most ancient families of this class seem to be perishing away, or sinking into hopless indigence, by a process as certain and inevitable as that which is working on the smaller landholders. All who are acquainted with the districts in which these decayed gentry abound, deplore the condition to which many of them are reduced; but compassionate instincts are the most hazardous basis for political action. Against their promptings, and the arguments by which they are supported, must be weighed the considerations urged by the opposite school, which deems it a law of nature that the weaker should go to the wall, and sees nothing but advantage in proprietors who have capital taking the place of those who have none. That these considerations are of great weight and importance cannot for a moment be denied. The Government cannot for ever go on sustaining a feeble class too nerveless, and too steeped in false pride, to make any exertion for themselves; and it is the tendency of aid of this kind to create a need for still more aid, and a feeling of a right to it which causes intense resentment when in the end it has to be withdrawn. It is a necessary result of our rule that the class of intelligent adventurers who adapt themselves to the new conditions should grow rich, while those who do not, grow poor. "Or dans une société," says Tocqueville, "où la richesse se déplace, les rangs sont bien près d'être renversés." Money has a weight and influence which will find exercise in some channel; and the natural desire to possess land cannot with safety be replaced by a craving and a struggle for employment under Government which in France "devint la source commune des révolutions et de la servitude." An effective desire of accumulation is set to work by smaller returns from land than from any other investment; and thus freedom of transfer leads to national economy. English civilization, too, must in the main radiate from the great towns; and the spirit of improvement is most likely to be developed in those who become proprietors unhampered by the conventions and prejudices that embarrass moneyless landlords of old pedigree.

36. But, again, we must remember that it is not a European country that we have to deal with, but India, with its classes sharply marked off, and with the character and capacities of each too uniformly moulded to admit of sudden change. Opium is a pernicious drug, yet its unreserved withdrawal may cause death. On the "greatest happiness" principle, therefore, some time ought to be given to the zemindars to adapt themselves to the inevitable change; some means, if possible, provided by which they can escape its threatened effects. Even on purely economic grounds it may be urged that the money which new men invest in land would otherwise be profitably employed in commerce; while the class who receive it as vendors, almost invariably squander it in fruitless prodigality. It might, therefore, be expedient from this point of view to impose some check on the license of sale and encumbrance; since it may well be that men who are useful members of society as landlords still need some protection against their own improvidence, which, left to itself, must make them at once landless and useless, or worse. The enterprise, too, of the newly-enriched has not shown itself thus far capable of doing much in the way of improvement. The requisite operations, to be carried out profitably on a really beneficial scale, must rest on a diffused and penetrating sense of duty: the employer must know that his labourer can be trusted to do an honest day's work, the labourer that he will receive an honest reward. This moral change, under which shirking on the one hand and oppression on the other will become almost impossible, has still to be wrought out. At present there is a certain kindliness in the relations between the old proprietors and those under them, a traditional acquiescence in their relative positions and the customary rights and duties which these involve. When a new race of landlords comes in, there is a contest between sheer greed, unqualified by any wholesome indolence, on

the one side, and obstinacy and evasion on the other. In our political speculations we usually allow economics, when they are concerned at all, to occupy the whole field of view; but a mere conflict of antagonistic interests, untempered by mutual regard, or by humane and moral considerations, is an impossible basis of society. If through our blind faith in chance we abandon the existing organization to influences that we see must be destructive, and let go our hold on the ordering of events, we may probably find by-and-bye that they have passed altogether beyond our control.

37. "To keep the wealthier families together in a position of social superiority, they must be endowed with the means of securing their estates against the chance recklessness of at least one generation. This might be effected by a system of family settlements authorized by the law. The owner of land, with the concurrence of those, if any, whose assent would be necessary for a sale, could be empowered to make a voluntary settlement of it for a life and a majority beyond his own; or else for a definite period of fifty years. Six months' notice of the intended settlement should be published; and the particulars of the property intended to be embraced in it should be recorded in the local registry office. Within the six months all persons claiming in the lands an interest not admitted in the document registered, should require their claims to be admitted by supplemental documents, or else file suits to establish their rights. No pre-existing claims, except the ones thus admitted or proved, should operate against the settlement; nor should it be liable to be affected by any subsequent transactions except in the precise way allowed by the law. This should make provision for leases, at not less than one-half of a rack-rent, for any period not exceeding 7 years, at the will of the tenant for life, and for any time not exceeding 21 years on conditions approved by the Collector or other local representative of the executive Government. For sanctioned improvements money should be obtained under the Land Improvement Acts as a charge on the property, or by a sale approved by the Collector of a portion of the estate. If the circumstances of the family, or of the property, had become so entirely changed that the maintenance of the settlement would be obviously mischievous, it should be open to the tenant for life to apply to the District Court for its rescission. Six months' notice should be given for opponents to come forward; and in decreeing a rescission the Court should be at liberty to put a portion of the property into a fresh settlement. A new settlement should be competent to each tenant for life in succession."

38. The law giving effect to settlements might provide or not for dowers and portions. If it did not provide for them, the landholder would naturally leave a portion of his estate out of the settlement in order to meet such charges; but it would probably be better to allow charges to be laid upon the property to the extent of some definite proportion, as one-fourth or one-sixth of its value on descent; the ratios of the dotations *inter se* being regulated by the law of the parties. The doctrines of the English law as to voluntary settlements should be expressly excl[illegible]

transfer of estates to be nullified, we ought to enable new restraints to be placed on such transfers, subject to the conditions that a full consideration of the subject may suggest. It would indeed be a vain expectation that the Government could by its legislation prevent the natural fruits of sloth and improvidence being reaped by landholders who persistently refused to rise to the level of their generation. The French noblesse continually grew poorer in spite of all the means employed for tying up estates. "Neanmoins ils s'appauvrissaient partout dans la proportion exacte ou ils perdaient leur pouvoir," while "les roturiers seuls semblaient heriter tout le bien que la noblesse perdait." To raise up a permanent barrier against such a state of things we must attach serious, honourable, and beneficial duties to the position of a landowner, while we avoid vesting it with vexatious privileges, which, as knowledge and ambition widen, would grow intolerable. But we should also afford time for a change of character to take place before the ruin of the present landed gentry is quite effected; and allow them, if they will, to guard against the dissipation of their estates while the indispensable course of education is gone through. The same protection is indeed necessary for the properties of those who have risen to affluence and acquired estates under the British rule. Like the English in Ireland, the descendants of those men are determined, after a generation or so, in all their chief tastes and habits by the influence of the society of which they have come to form a part. If that society is prodigal, and averse to culture and mental exertion, so will they be. Until the general tone is improved, our own local aristocracy will enjoy no more than an ephemeral existence, if the road to ruin be laid wide open to the scapegrace sons of thrifty fathers. This continued disappearance of families, either of old repute, or just as their honours are mellowing by time, must be of the most serious import. India, which we are striving to make a political community, has no political history, no historical consciousness generally diffused, out of which a true nationality can be developed to give form and impulse to its future. Families of distinguished social position, impelled to a certain loftiness of feeling by the pride of ancestry, and acting on hereditary principles of political conduct, are virtually indispensable in such a community. In them, and in them alone, the sense of public honour maintains its existence. They use without effort an habitual power of command; and form a nucleus of organization in the midst of what is else a mere chaotic mass of human atoms tending to no common centre as they are drawn by no common force.

40. The measures already suggested would throw such safeguards round the ownership of land that any further amelioration of the law might seem to be almost superfluous. To give effect to them, Sections 280—282 of the Code of Civil Procedure would have to be modified so as to enable an imprisoned debtor to obtain his discharge without giving up his holding and the implements and stock necessary for working it. Then, if the decree were for less than one hundred rupees, the Court in ordering his discharge might absolve him from all further liability. Thus the poorer debtors would seldom, except in cases of misconduct, be reduced to absolute beggary. But a law of insolvency is required both to provide for the cases of a class standing just above the lowest in the social scale, and to prevent the scramble that now sometimes takes place amongst the creditors. It is required, too, supposing laws for the general preservation of landed property be passed, in order to provide for the punishment of criminal recklessness or fraud in incurring debts. It should enable the District Courts, notwithstanding these laws, to dispose at their discretion of the debtor's interest in his lands. It should also enable them to deal freely with the several claims on the insolvents according to their nature and origin, in order to place moderate and honourable creditors on an equal footing with those who had obtained unfair advantages, either by unconscientious pressure or by what would be still more

common, the connivance of the insolvent. They should have power, in cases of marked prodigality, to place such property as might be reserved for the family in the hands of trustees subject to the orders of the Court. The connexions of the members of a family are indeed too intimate to admit of any arrangement by which the folly or crime of one shall not be the misfortune of all, but something may be done to alleviate the misfortune. Society is interested in getting reckless insolvents punished, and honest ones set to work again as soon as possible, and in procuring a prompt distribution of all available assets. As trade is developed, and the dependence of traders on one another becomes greater, an insolvency law becomes as necessary for the Mofussil as for the Presidency-towns: its partial operation is a source of hardship. On all these grounds it seems desirable that an insolvency law for the Mofussil should be passed without delay. If made effective, it would to a great extent answer the purpose of the other protective measures above suggested, supposing these should be thought to go too far. If they should be adopted, it would usefully supplement them. The draft of such an Act for the Province of Sind was lately submitted for consideration; and the remarks made in forwarding that draft have much more than a merely local application. "In framing an Insolvency Law for an Indian community, careful attention should be paid to the native law, the constitution of native society, and the peculiar conditions that it presents as to the relative intelligence of its members. These circumstances make it desirable, and even necessary, that an insolvency law should expressly direct advertence to be had to the family claims arising under the Hindu and the Mahomedan law, and that it should vest in the Courts a liberal discretion for dealing on equitable principles, and even by reference to rules of policy, with the claims advanced against an insolvent."

41. Such are the considerations, stated in outline, on which, in the writer's opinion, a claim may be rested for the several measures he has ventured to propose. And if these considerations are such that they should have weight with the Indian Government, they deserve also the careful attention of the Indian community. Legislation in the sense suggested must from its novelty necessarily involve many practical difficulties. It is possible even that these difficulties may be insuperable unless modifications are admitted for the express purpose of avoiding them. The operation of the laws would be, on the largest scale, attended with results for good or evil of incalculable importance. The principle and the probable working of each should, therefore, be examined from the manifold points of view supplied only by the experience and the interests of a society composed of diverse elements. It is with the hope that competent critics may be moved to such an examination, that discussion may be stimulated, and the elements of a just decision arrived at, that the foregoing observations have been laid before the public. An exhaustive treatment of any one of the proposals would obviously extend far beyond the reasonable limits of an essay meant to be read through at a single sitting; and the several measures are so connected with each other that no one can be properly appreciated apart from the rest. Roughly drawn, therefore, as the plan may be, the author has thought that it had better be submitted thus to the tribunal of public opinion, which would probably excuse faults of detail if it recognised a practical comprehensiveness of design, than frittered away in separate investigations of particular and partial projects of law. It is almost needless to observe that whenever it takes up the work that circumstances are pressing for it, the Government of India will find the task one of almost insurmountable labour and anxiety. It needs the stimulus and the support of an awakening, yet generous and enlightened, popular opinion. In the framing of the result has yet to be done; but the desire to arrive at sound terms of public policy is now so generally diffused that much will surely be excused in any not wholly preventible imperfection to the inevitable controversy.

2.—Report of Famine Commission, 1880, Part II, Chapter III, Section IV, pages 130—136.

Indebtedness of the Landed Classes.

1. No subject has been more strongly and frequently pressed on our attention than the evil results which spring from the degree to which the landowners are sunk in debt, the asserted rapid increase of their indebtedness, and the difficulty they find in extricating themselves from such burdens. In some parts of India, notably in the four districts of the Bombay Deccan and in the Jhansi district, their indebtedness has become so grievous that the Government has recently been led to take special steps for their rescue, and in other parts it has at different times intervened to protect special classes whose ruin, otherwise unavoidable, it was thought necessary, on political grounds, to ward off. On a topic which has been so long and earnestly debated by every Indian administrator of importance, it is difficult to make any new suggestion. It was fully discussed last year in the Council of the Governor-General of India, and remedial measures were adopted, which are still only in an experimental stage, so that we can offer no conclusion based on the result of their actual operation; but the subject is one of such gravity that the Famine Commission have felt bound to give it their most careful consideration.

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2. We have found no reason to believe that the agricultural population of India has at any known period of their history been generally free from debt, although individuals or classes may have fallen into deeper embarrassments under the British rule than was common under the Native dynasties which preceded it. It has been usual for the landholders in all times habitually to have transactions with the money-lender of their village, with whom they carry on a running account on friendly terms, taking from him advances for seed and food in the months preceding the harvest, and handing over to him the greater part of their produce, from the money proceeds of which he pays their dues to the State and places any balance to their credit. Under this arrangement the ignorant cultivator was relieved of much trouble and responsibility, and his payments to the Government were conducted for him by the money-lender or village headman. His account might run on amicably for a long series of years unless extravagant expenditure on family ceremonies, or a failure of the harvest from drought, should involve him in difficulties beyond his ability to meet. Even in such cases the money-lender would be deterred from extreme measures by popular opinion and by the knowledge that he could count on no support from the ruling authority in selling up and reducing to destitution a member of the class on which the payment of the land revenue depended. Thus though the cultivator (in the absence of any power of obtaining loans on the security of his holding) was never deeply involved, he was seldom free from debt, and lived the life of a contented serf, exempt from the risks and responsibilities which accompany the possession of independent rights, but also without any stimulus to raise himself or improve his position.

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3. The changes which have been introduced under the British Administration are for the most part those which will always occur in the progressive development of social life from a simple to a more advanced stage. Of these changes those which have affected the landed classes consist chiefly in their admission by the State to better defined rights of property in their holdings, combined with the more complete recognition of the force of contracts, and the obligation on the courts of justice to enforce them. It is to be expected in every forward movement in the education of a people that while the result is beneficial to the country as a whole, some classes or individuals will fail to

display the qualities needed to benefit by the advantages offered, and will suffer inconvenience under the novel circumstances to which they are unable to adapt themselves. But although a section of the landholders has thus suffered, we ought not to overlook the fact that the class as a whole has prospered under British administration, and that the more enterprising and substantial landowners have greatly benefited by the enlargement of their proprietary rights, and by the moderation with which the land revenue is now assessed.

4. We learn from evidence collected from all parts of India that about one-third of the landholding class are deeply and inextricably in debt, and that at least an equal proportion are in debt though not beyond the power of recovering themselves. It is commonly observed that landholders are more indebted than tenants with occupancy rights, and tenants with rights than tenants-at-will, a result obviously attributable to the fact that the classes which have the best security to offer are the most eligible customers of the money-lenders. It does not appear that in this respect one province greatly differs from another, but certain localities are from special circumstances either above or below the average condition. Thus in the Punjab the canal-irrigated tracts are stated to be highly prosperous; in Eastern Bengal the profits of jute cultivation have enriched the cultivating tenants; in the Central Provinces the landholders have profitted in the same way by high prices of cotton and large exports since the American War; in Madras the ryots of the deltas are in easy circumstances. On the other hand, the precarious outturn of the crops, with other adverse circumstances, have grievously depressed the landholders of the Bombay Deccan and the adjoining districts of Madras, as well as those of the somewhat similar region of Jhansi; and many of the talukdars of Oudh, of Sindh, and of Guzerat, without such excuse, have been led by a course of extravagance into a state of bankruptcy, to relieve them from the consequences of which special legislative measures have been framed.

5. With regard to the creditors of the landed classes, we are informed that in the more prosperous parts of the country the substantial landowners are themselves engaged in money-lending, and that neither they nor the professional money-lenders of the better class often employ the agency of the Civil Courts against their debtors. But it has happened in some cases that when a district has fallen into depression it has attracted an inferior class of foreign usurers, who have no scruples in using every means open to them to secure a profit on hazardous transactions, and who, working entirely through the machinery of the Courts, are not inclined to cultivate sympathetic relations with the people, by whom they are detested in turn. It is not probable that the gains of these usurers are excessive, but they are exacted with the utmost degree of friction, hostility, and suffering, with the unfortunate result of attaching odium to the civil tribunals.

protecting him from extortion or oppressive measures of coercion, to constrain him to pay his just debts to the full extent of his means, but by less cruel and ruinous expedients than imprisonment or the sale of all he possesses. The means available to these ends are cheap and accessible courts which shall give full consideration to the equity of every claim, and a simple method of recovering debts.

7. The origin of debt among the landed classes is traceable to various causes, among which the most prominent are the failure of crops from drought, expenditure on marriage or other ceremonies, general thriftlessness, an improvident use of sudden inflations of credit, the exactions of an oppressive body of middlemen, and administrative errors such as unsuitable revenue settlements; and debt once incurred very rapidly grows with exorbitant rates of interest. In so far as the causes of indebtedness lie in the inherited tendencies of the people, such as want of forethought, and readiness to promise anything in the future in order to secure present gratification, no remedies are possible, except through the spread of education, the gradual growth of provident and self-denying qualities under the influence of painful experience, and the success of the stronger and thriftier individuals in the struggle for life. It is obvious that there is danger lest any intervention of Government should hinder the growth of such qualities, or protect the weak and foolish too completely against the consequences of their own action. But where the misfortunes of the landholders have ensued on the introduction of novel institutions somewhat too advanced for their present stage of intelligence and forethought, it is the duty of the Government, for a time at least, to moderate the stringency of the action of those institutions; and this has commonly been the object of the remedies which have been suggested.

8. Among the administrative measures by which indebtedness is alleged to have been caused, is the system of rigid and regular collection of the land revenue. Seeing the very small proportion which the land revenue bears to the gross produce of the land, there cannot be much foundation for this view, though numerous instances have been given of men who in times of calamity have been forced to borrow, and who have never been able to recover themselves afterwards; and it is to prevent such a misfortune as this that we have already recommended that on such occasions greater leniency should be shown in postponing the demand till better times. But we think that too much weight should not be attributed to this cause; the fact that landowners who have no land revenue, or only a light quit-rent to pay, are often also deeply embarrassed, proves, if indeed it required proof, that the payment of the land revenue is not the main cause of debt. If a man spends all his income on himself, and borrows to pay his rent or taxes, it can hardly be said that his indebtedness is due to the fact of his having rent and taxes to pay, when these charges bear so light a proportion to income as the land revenue does to the gross outturn of the land.

9. It has, again, been alleged that the action of the Civil Courts has contributed to the indebtedness of the agricultural classes, and various suggestions have been made for constituting tribunals and a procedure which may provide more effectually against this result. Sufficient regard is not, it is said, in all cases paid to those equitable considerations which are of such essential importance in the adjudication of disputes in which the ignorance, improvidence, or the necessity of the one party places him at the mercy of the superior intelligence and resources of the other. Contracts, the extravagant onesidedness of which bespeaks a sense of hopeless weakness on the one side and a spirit of unscrupulous exaction on the other, have been enforced by the Civil Courts with too mechanical an adherence to the letter of the law, and too little regard to the circumstances of the parties and the substantial merits of the case.

Native customs which tempered the severity of contracts, such for instance as that which restrained the rate or amount of interest, have been swept away, and a rigid and elaborate legal system has too often proved only an additional instrument of oppression in the hands of the more wealthy or better instructed litigant, and an additional cause of ruin to the impoverished agriculturist.

10. Several alterations have, however, within the last few years been made in the Code of Civil Procedure with a view to providing adequately for the relief of insolvent debtors, to guarding against the oppressive use of the machinery for executing decrees, and specially mitigating the harshness of its operation as regards agriculturists. Tools, implements of husbandry, the cattle necessary for tillage, the materials of his house, are, in the case of an agricultural defendant, exempted from attachment or sale in execution of decree. The district officer is further empowered to represent to the Court that the sale of land in execution of decree is objectionable, and that the decree can be satisfied by temporary alienation or management, and thereupon the Court may authorise such satisfaction. Another provision enables the Government in any particular area to transfer the execution of such decrees as involve the sale of land to the district officer, who is thereupon invested with authority to deal with the land, adopting various courses for satisfying the decree, and avoiding the necessity, except in the last resort, of an execution sale. The Government, the High Courts, and other superior tribunals, will no doubt continue to watch with care the operation of the law, and to take every precaution against its abuse.

11. Some evidence was brought before us in favour of a simple and inexpensive system of settling disputes by the agency of unpaid arbitrators, and it was suggested that in this way relief might be afforded to agricultural debtors. We observe, however, the existing law makes ample provision for recognising references to arbitration by consent of the parties, and for giving to the awards of arbitrators so appointed the form of a decree. It has not, however, been found that this mode of settling disputes is generally popular; and we were informed that recent changes in the Stamp Law, by which a heavier fee than before is imposed in submissions to arbitration and awards of arbitrators, will tend still further to discourage resort to this mode of adjustment. If this prove to be the case, it would be matter for consideration whether the Stamp Law might now with advantage be altered in this respect. Arbitration, other than that by consent of the parties, stands of course on an altogether different footing, and there is no reason to suppose that it would be for the benefit of any class of litigant. On the contrary, it would be likely to open the door to much of that corruption which is so serious a difficulty in the administration of justice in India. The Civil Courts are strictly controlled and supervised, and are, whatever their other imperfections, incomparably purer than any tribunal before known in India; nor is it probable that an equally higher standard of purity would be attained by resource to a less exact pro-

13. The facts of the case which the Act for the relief of indebted agriculturists in certain parts of the Deccan was designed to meet, explain how a rural population may sink below the level of average prosperity. Much of the soil is poor, the rainfall capricious, and the outturn of the harvest liable to violent fluctuations. The conditions which prevailed in the Deccan under Mahratta rule were unfavourable to steady industry, and the present generation has come within the influence of a most exceptional disturbance of prices. A sudden rise in the value of cotton at the time of the American War occasioned a vast inflation of credit, which was fed by a corresponding influx of capital seeking investment, whereby the landholders, under cover of the proprietary rights they had acquired, were tempted to improvident borrowing. Being deficient in the qualities of forethought, energy, and self-reliance, they were thus laid open to new dangers, while their improvident habits were such that the low unvarying revenue assessments of our Government brought them no advantage. The extravagant habits engendered by this temporary prosperity were not easily laid aside, and the subsequent collapse in prices, combined with bad seasons, threw them into debt. As indebtedness became more hopeless and inextricable, the money-lender resorted more freely to the aid of legal process, and the debtors, exasperated at the invasion of their cherished rights in their holdings, were driven to despair, and finally on several occasions to rioting and violence. The proportion of landowners seriously embarrassed does not appear to exceed 30 per cent., but the amount of debt in proportion to income is heavier than that stated to exist in other provinces, and about two-thirds of the debt is said to be secured by mortgages of land.

14. By the Act which has recently come into force for the relief of the Deccan agriculturists, village registrars are to be appointed, before whom agriculturists are to execute all instruments relating to obligations for the payment of money or charges on property, and all conveyances and leases: any deed not thus registered and attested is not to be deemed valid. Agriculturists are entitled to demand receipts for all payments, as well as yearly statements of account, or pass-books in which their account shall be written and attested by the money-lender. The local Government is empowered to appoint village munsifs, with jurisdiction in small suits of which the subject-matter does not exceed ten rupees,—a system which has been found to work well in the Madras Presidency. Suits of larger value will be tried by additional subordinate judges who, when the defendant is an agriculturist, will, as a rule, inquire fully into the history of the debt, take a separate account of principal and interest, credit the debtor with any money repaid, disallow all interest which the Court deems unreasonable, follow, in decreeing the amount due, the principle of Hindu law known as *dam dupat*, under which the interest must not exceed the principal, and fix instalments for the payment of the sum decreed. The Government will doubtless exercise the powers provided by law for reducing the expense of stamps and fees in these Courts. If the decree is for less than 50 rupees, the Court may discharge the agriculturist at once on payment of as much as he is able to pay. If the defendant is found to owe 50 rupees or upwards, the Court may treat him as an insolvent, and any agriculturist whose debts are of similar amount may be declared an insolvent on his own application. In such case all claims against him are called in, and the amount to be recovered from him is ascertained by inquiry into the history of them all. No agriculturist can be arrested or imprisoned in execution of a decree for money, nor can his immoveable property be attached or sold unless it has been specifically mortgaged. In the latter case the Court may direct the collector to let the property for a period not exceeding 20 years, if thereby a premium can be obtained equal to the amount of the secured debt, or otherwise to sell it. If the debts are not secured by mortgage, the Court may direct

before him. But if it be the case that this obligation is sometimes insufficiently recognised, it would be well that the language of the law on this subject should be rendered more explicit, and the duty of the judge be more distinctly pointed out. Instances were brought to our notice in which bonds, the terms of which were in a high degree suspicious, have, on the mere admission of signature by the defendant, been without further inquiry made the basis of a decree which involved most unfair advantage to the one party and the total ruin of the other. It should, we think, be expressly enjoined on the judge to satisfy himself that the defendant was fully alive to the character of the transaction, that the bargain was not extorted in a moment of extreme necessity, that the relations of the parties were such as to leave each a free agent, and generally to apply to the contract all those considerations which the scruples of English equity judges have interposed between improvidence and those who would fain turn it to their own advantage.

19. We advocate, however, one modification of the Bombay Act in respect of the provision which, if the land has been specifically mortgaged, necessitates its alienation, temporary or permanent, from the management of the mortgagor. This provision is severer than that of the amended Civil Code, under which the collector may liquidate a decree by managing the land for a term not exceeding 20 years through another, that "other" being, if the collector thinks fit, the mortgagor himself, who may then be kept on as the cultivator of the land. If the debtor is turned out, and the land is let to another person for a term of years, at the expiry of that term the debtor will re-enter with no increased sense of the importance of thrift, but with additional incapacity, through the disuse of years, for managing the land. We therefore recommend that in all such cases the principle should be followed of paying off the debt by instalments, the land remaining in the hands of the debtor, and being managed by him on payment of a full rent, the excess of which above the revenue would go towards the liquidation of the debt, such payments being collected from him by the Revenue courts along with the land revenue, and being made over every half year to the creditor. In the event of the debtor's failure to carry out such an arrangement, and to pay the instalments thus fixed, unless he is prevented by drought or any other exceptional calamity, he should be ejected and his rights in the holding sold, when it may be hoped that he would be replaced by a better and more thrifty man.

20. As a supplement to cheap and accessible Civil Courts, the assistance of the Revenue officials in the repayment of agricultural debt is probably the greatest benefit to both debtor and creditor which the Government is able to offer. The Revenue officers are possessed alike of the means of ascertaining what the debtor could pay, and of realizing the instalments of his debt with the minimum of cost and risk to the creditor. In Upper India a zemindar who has a gross rental of Rs. 100 pays Rs. 50 as land revenue and about Rs. 15 in cesses. Rs. 10 must be set aside for the vicissitudes of the seasons, and Rs. 25 may be taken as the minimum annual profit he receives as a proprietor. In the majority of cases he himself cultivates a portion of the estate; if, then, he is content to pay a cultivator's rent, and to live on a cultivator's profit, he is able to pay his whole proprietary profits, or Rs. 25 a year, or 50 per cent. on his Government revenue, in liquidation of his debts. Such an instalment will clear off a debt of Rs. 102 at 12 per cent. in six years, or of Rs. 200 at 9 per cent. in 14 years. In Southern India the margin between the Government rates and a full rent is probably not so great, but the Revenue authorities would decide what the average profits of a ryot are. On such considerations the instalments should be fixed, and when fixed they might be collected with the land revenue and paid over to the creditor, who would thus be freed from all trouble in executing his decree, and from almost all risk.

21. The risk being thus lowered, it is but reasonable that the rate of interest should be reduced, and this is an essential part of any scheme for paying off large amounts of debt. It may not be wise to fix by law the limits of the rates of interest which the Court shall decree, but it would seem desirable that the local Government should be authorised to indicate to the Courts the maximum and minimum rates that should, with a general reference to the value of money, ordinarily be paid. At present 24 and 36 per cent. are commonly paid by agriculturists—rates which would be fatal to successful agricultural enterprise in any country. Six per cent. is the rate now usually paid by native merchants when they borrow from each other as a temporary convenience, and something above this may be necessary in India in the case of profits dependent on the land and the weather, but the object should be not to recognise any rate in excess of that which would be reasonable, having in view the character of the security offered.

22. The same principle adopted for dealing with existing debt might also be applied in the cases of new loans raised by owners of unencumbered estates. A mortgage need not be an agreement entered into privately, and on very onerous terms, between the money-lender taking all risks, and the landowner assenting to terms he does not understand, but might with advantage to both parties rather be an agreement openly made between them before the collector, and on terms sanctioned and to be enforced by him. Any mortgage not so made would rank only as a simple unsecured debt, and no cognizance of it would be taken by the Court, which alone would have jurisdiction in respect of funded debts. Personal and unsecured debts would not be put beyond the pale of the law, but decrees for them would not be liable to be executed against the land. In special tracts it might be thought advisable that the collector should be empowered to refuse his sanction to a loan incurred for an extravagant or merely ceremonial purpose, or for any cause but one of agricultural improvement or necessity.

23. The landholder would in such case execute an agreement before the collector, or the Court which deals with agricultural debts, to repay the loan, principal and interest, in an appointed number of instalments, which would be collected from him in the same way as the land revenue, next after any sums due to the Government. The estates on which such loans are secured should be free from other encumbrances, and it should probably be enacted that no claims on the land should be recovered except by the collector as above stated, and that he should recover none except those thus openly arranged before him. The landholder would be required to surrender his right of transfer or sale while his holding is thus charged. His power of improvident borrowing would certainly be restricted, but he would be protected from the danger of losing his land, while the creditor would have good security up to a certain definite and calculable limit, and would be able to lend at moderate interest. If a landholder is unable to offer the security necessary to enable him to obtain a loan on these terms, we would not withdraw his power to sell his rights. Nor would we be understood to recommend any interference with the free transfer of landed property, or with the rate of interest, except in cases where, and so long as, the condition of the land holding community presents unhealthy symptoms which seem remediable by such expedients.

3.—Bengal Government's letter No. 3565L.R., dated 16th July 1894, with Board of Revenue's letter enclosed.

No. 3565L.R., dated 16th July 1894.

From—C. E. BUCKLAND, Esq., Secretary to the Government of Bengal,

To—The Secretary to the Government of India, Revenue and Agricultural Department.

In continuation of paragraph 2 of my letter No. 288L.R., dated the 10th January 1893, I am directed to submit a copy of a letter No. 800A., dated the 20th June 1894, from the Board of Revenue, with its enclosures, reporting on the statement of the Board that the effect of the Bengal Tenancy Act has been in many instances to place the raiyats at the mercy of money-lenders. The main points which, in the opinion of the Lieutenant-Governor, the Board's report establishes are as follows:—

(1) Since the passing of the Tenancy Act there has been a great increase in the number of sales of occupancy rights registered (and presumably in the number of such tenures sold, whether registered or not), though the development and popularity of registration may partly account for the increase in the figures, and the real increase may not be as large as the registration returns indicate; and also in the value paid for these rights.

(2) There has been a corresponding increase in the unwillingness of zamindars to admit the existence of a custom legalising such transfers; and as a rule, when the landlords have gone into Court, they have won their case and obtained a decree declaring the "custom" not to be proved.

(3) The returns do not indicate any increase in the proportion of occupancy tenures transferred to mahajans as compared with those transferred to other classes; and it is generally agreed that the parties classed as mahajans are not the grasping and foreign money-lenders of other parts, but persons who are agriculturists themselves, and who have a little capital which they lend out at usury.

(4) Very little evidence exists as to the position into which the occupancy tenant sinks when he has sold his tenure. The Board write on this subject as follows:—"In reference to the allegation that there are many raiyats who are now under-tenants at a rack-rent on their holdings, which have passed into the hands of mahajans, Mr. Stevens desires me to say that there is not much evidence in support of this position. Doubtless such cases occur, but it is believed that the usual course when the mahajan retainsthe land is for the old tenant to remain as an under-tenant sharing the crops. It is not clear that any more hardship is caused in this way than would be if the insolvent cultivator were ejected from his holding without the price of his interests. On the contrary, there appears to be in that case more danger of his sinking to the position of a landless day-labourer." Sir Charles Elliott proposes to direct the attention of Settlement Officers to this subject, and to cause them to ascertain after attestation, how many men in the village have gone through this experience, and have become cultivators of their old fields as sub-tenants, either at rack-rents or on metayer-rents. It will certainly be useful to compile some statistics of this kind.

(5) As to the proposal made by Mr. Blyth, Collector of Champaran, to declare transfer of portions of a tenure to be illegal, this might be utilised as a basis for negotiations if it were desired to obtain the consent of landlords to the legalisation of transfer of whole tenures; but otherwise there is no particular reason for declaring the practice illegal. It has no economic disadvantages from the raiyat's point of view—rather the reverse, as it is better for him to part with a field and remain the free owner of the rest, than to be encumbered as to the

whole tenure. It is inconvenient to the landlord as regards the keeping up of his records, but Government need not contemplate legislation for the purpose of preventing that inconvenience.

(6) On the whole, Sir Charles Elliott adheres to the formula which the Indian Famine Commission accepted, and which is quoted in paragraph 7 of the Board's letter as accepted by Sir Rivers Thompson. It is possible that the technical and narrow views which the Civil Courts may take of the evidence required to prove "custom" may defeat that policy, and may cause an ever-widening breach between the law as administered by the Courts and the general practice, so that it may eventually be necessary to interpose by legislation to set the Courts right. But though certain cases are quoted in which too narrow a view seems to have been taken, it has not been shown that these cases are frequent or flagrant enough to require notice, or to check the growth of the custom of transfer as practised among the people. Moreover, it may be conceived that by degrees the Courts will widen their view and accept the evidence of accomplished facts.

2. This being so, His Honour does not think that any sufficient ground has been adduced for interfering with the law as it is laid down in the Tenancy

neglect or inability to pay his rent he loses his land, he is not ejected without any compensation.

3. It is, however, possible that what was intended was not so much that the power of free transfer is considered by the raiyat to be an unmitigated evil, as that it is so regarded by others who have his interests at heart, and who know better than he does what is expedient for him. It is essential, however, that those (very few) who hold this extreme opinion, as well as those who see that the system has some advantages, though they think that the disadvantages preponderate, should bear in mind that it is not the business of the Government or of the Legislature to construct an Utopia, but to examine existing facts and tendencies and to frame their measures in accordance with them.

4. The Board have not before them at present any very definite information as to the early history of the transferability of raiyats' holdings in Bengal. Mr. Justice Field, in his "Note on the Transferability of Raiyats' Holdings," appended to his Digest, says that it appears to have been generally supposed that the interest of the raiyat was heritable, "but that he could not sell it was admitted by the highest authorities." In support of this last position he quotes Sir John Shore's minute of 1789 :—"But though his title is hereditary, yet the raiyat cannot sell or mortgage his land."

Mr. Field then argues that, first, the Legislature declared estates to be transferable and then patnis, and that the idea of alienability by a natural progress extended to the raiyat's holding, this result being in some measure brought about by the zamindars bringing such holdings to sale for arrears of rent. The sequence then was (1) transfers at the landlord's request, (2) transfers with his consent, (3) transfers without his consent.

There are others who maintain that the transferability of a raiyati holding was recognized by the ancient custom of the country, and that the practice fell into disuse in consequence of the powers acquired by the zamindars as a result of the Permanent Settlement.

5. More probable than either of these pronouncements would seem to be the view that in the times after the breaking up of the village communes in Bengal, and before the Permanent Settlement, there was as great a diversity of local conditions as there is now, and that it was as dangerous as it now is to make broad assertions based on limited experience. Though the stages of transferability have no doubt been correctly given by Mr. Field, so far as the history of British legislation is concerned, Mr. Stevens hesitates to believe that the transferability of raiyats' holdings is of such recent creation as that writer thinks. Looking to the original position of the zamindars before the settlement, it is easy to see why their zamindaris should not have been alienable. But the case of the actual cultivators of the soil was altogether different. It is true that over a large part (perhaps the greater part) of the country there was no pressure of population on the soil, and that the competition was (as it now is in the Chota Nagpur Tributary States and other localities) for raiyats rather than for land; but there must always have been localities favoured by fortune or improved by labour beyond others, so as to be attractive to raiyats; and when a possession or a privilege, in its nature susceptible of transfer, is held by one man and desired by another, it requires a very powerful counteracting influence to prevent the making of a transfer either by force or by agreement. It may well be doubted whether the influence of the zamindar would have been sufficient, or could have been applied with sufficient uniformity to entirely prevent transfers of raiyats' holdings.

6. But it is not necessary for the present purpose to attempt to proceed far into speculations of this sort. It is certain that, notwithstanding the absence of direct legislation, the custom of transfer, whether perfectly free or subject to interference from the zamindars, had become exceedingly common

before the Tenancy Act was passed. So completely recognised was this that the question was whether all occupancy rights should not be declared by the new law to be transferable. The arguments for and against were very fully stated in Mr. Field's note, which has been already quoted. In presenting the Bill to the Legislative Council Mr. Ilbert said :—

"Looking at the question of transferability next from the point of view of the occupancy raiyat's interest, the Local Government and the Government of India have come to the conclusion that, in the absence of evidence of any evil consequences which have already followed from such transfers, or which may be anticipated as likely to occur in the near future, it would be unwise to oppose the growth of the very strong tendency towards transferability which the prevailing customs show to exist in rights of this class in almost all parts of the country. The existence of such a tendency indicates—which, indeed, is clear from other evidence—that those most concerned regard the question of transferability as an important incident of the right; and it cannot be doubted that the enactment of a law absolutely forbidding transfers would, even if it saved existing customs, be regarded as a hardship. I may add that, if the custom of transferability is so widely established as is stated by some very competent authorities, the operation of a law of this sort would be so limited as to be of but little importance."

In the course of the debate Sir Stewart Bayley remarked that he had—

"A good deal of evidence to show that so strong is the belief in the inherent right of the actual cultivator to a possessory status in the soil that even korfa or sub-tenants' holdings are frequently brought to sale in execution of a decree."

Again he observed that "there is ample testimony to the effect that the tendency to recognise occupancy tenures as transferable is increasing, and the real question was whether the facts, as they stand, were to be ignored or recognised." The Viceroy, in his speech concluding the debate, said :—

"The evidence appears to me, I confess, to be overwhelming, that in the greater part of Bengal the practice of transfer exists under a custom which the courts have recognised."

7. In reporting on the Bill the Lieutenant-Governor (Sir Rivers Thompson)

to actual cultivators of the soil, a result towards which no practical solution has hitherto been suggested."

The final advice given by the Lieutenant-Governor after considering the reports and statistics which had been collected was "to recognise the right of free transfer of occupancy holdings among the agricultural population in Bengal Proper, but in Bihar to leave matters to be regulated by custom as at present."

Statistics of the transfers of occupancy holdings by registered deeds during each of the years 1881-82, 1882-83 and 1883-84 are given in Appendix II attached to the report. The following figures, division, by division, for the year 1883-84 will give a sufficient indication for the present purpose of the extent to which such deeds were registered :—

Division.	Number of transactions.	Purchasers.					Price.	Number of years' purchase of the rents.	Remarks.
		Mahajan.	Landlord of holding transferred.	Other landlords.	Raiyats.	Other unspecified.			
1	2	3	4	5	6	7	8	9	10
							Rs		
Burdwan . . .	14,329	3,304	230	324	8,193	2,413	9,36,977	9·7	Transfers were made in every district in Bengal. In the same year holdings of this kind were sold in execution of decrees in every district except Darjeeling, Malda and Champaran, the total number of sales being 11,892 and the total price Rs. 4,93,467. The totals of columns 3—7 are not and would not necessarily be equal to the figures of column 2.
Presidency . . .	6,043	548	55	346	2,849	1,257	2,00,605	6·9	
Rajshahi . . .	7,813	373	111	205	6,545	364	6,42,229	11·4	
Dacca . . .	4,736	526	27	353	3,674	613	5,41,719	10·7	
Chittagong . . .	6,346	314	46	441	4,934	665	5,60,008	10·2	
Patna . . .	1,964	349	465	316	608	178	1,43,814	11·5	
Bhagalpur . . .	6,706	1,270	64	101	4,351	236	3,74,476	10·6	
Orissa . . .	976	174	27	36	472	246	67,917	20·2	
Chota Nagpur . . .	617	61	9	8	374	60	30,711	8·7	
Total .	47,030	6,743	1,174	2,208	31,911	6,504	32,00,553	9·6	

9. Eventually the Select Committee decided to suggest the provision which afterwards became the law now in force, namely, that the occupancy should be transferable where it had been customary that it should be so. It is noteworthy that two great authorities in Bihar, Mr. Gibbon and Sir Steuart Bayley, were disappointed by this change. The former in his memorandum of dissent wrote :—

"I dissent from the decision of the majority of the Select Committee to omit transferability from among the incidents attached to an occupancy holding. I have already exhausted every argument I can think of to induce the Government and the Committee to legalise and control transfer and failed to gain their support."

Sir Steuart Bayley, in moving that the Bill as amended in Select Committee should be taken into consideration, said that he adhered to the opinion expressed in the first debate, to the effect that both in Bengal and Bihar the custom had taken such deep root that it is desirable to legalise and regulate it; that in both provinces this course would in the long run, if not in the immediate future, be attended by beneficial results both to the cultivators and to the productiveness of the country, and so far he sincerely regretted the decision arrived at. He, however, admitted the difficulties and thought there was "something to be said for leaving the custom to strengthen itself and crystalise into a shape which may hereafter render its regulation less difficult" than it then was.

10 It has been necessary to bring the above quotations prominently forward, though they are taken from sources which are not recondite, and which are not specially in the possession of the Board. For it is to be feared that many officers, especially those who have acquired most of their experience since the Tenancy Act was passed, now fail to recognise the conditions as they existed in 1885. It is quite clear from these extracts and from the other contemporaneous discussions—

(1) That the practice of transferring occupancy holdings, whether with or without restrictions, existed in every district in the province.

(2) That the practice was most distinctly recognised where the raiyats where strongest and most flourishing.

(3) That, of the divisions in which the Tenancy Act is now in force, the Patna Division was that in which the practice was least common, so far as can be gathered from the number of registered deeds of transfer.

(4) That the custom was growing everywhere.

(5) That there was a large body of opinion in favour of declaring transfers lawful either without condition or with the right of pre-emption given to landlords.

(6) That the example of the Dekkhan and other tracts, in which the bestowal of rights of transfer had been injurious to the raiyats, was not lost sight of, but was not considered deterrent in the circumstances of Bengal, where the mahajans were generally of a different class from those of Western India.

(7) That there was a general expectation and belief that the practice would continue to grow.

11. There seems no doubt that, but for the strenuous opposition of the zamindars, complete transferability, probably with the condition of pre-emption allowed to the landlord, would have been attached by the law to all occupancy holdings. Such a solution of the problem commended itself to Mr. Stevens himself at that time; but he has since somewhat modified his views, and believes that the provisions which have become law were preferable, since they have allowed scope for a diversity of treatment in accordance with local circumstances.

12. The power of transfer of occupancy holdings was thus left theoretically untouched by the new legislation, but it is probable that indirect encouragement has been given to the practice—

(1) By the greater definiteness given to the inception and incidents of occupancy rights, which increased the value of some holdings and perhaps gave a value to others which were previously valueless.

(2) By the distinct mention of customary power of transfer in the

power of transfer. The Rajshahi Association say that in no part of that district does the zamindar recognise such rights, and courts do not generally uphold it when contested; and the Collector, Mr. Price, says that in cases of conflict with respect to the right the Civil Court has almost invariably ruled in favour of the landlord. In Mymensingh also it is reported that the zamindar is sufficiently powerful to remain practically the arbiter of the question whether the raiyat shall, or shall not, sell his holding. In two important recent cases zamindars have obtained civil court decrees prohibiting sales by raiyats. Probably the same might be said of other districts, and there can be no question that very much depends not only on the custom of the locality, but on the power and character of individual zamindars, while great strictness on the part of the law courts in defining the term "custom" must militate against the growth of the right in places in which it has not existed for very long. There are thus tendencies at work both in favour of and against the spread of this practice of transfer. Mr. Stevens' own belief is that eventually the former will prevail.

14. It is alleged that raiyats are falling more and more into the hands of the mahajans. This is no new objection; it was frequently raised in the course of the discussions on the Tenancy Bills. The figures in the table attached to paragraph 8 above show that among 47,030 voluntary transfers registered, 6,745 transferees, or about 1 in 7, were mahajans. Roughly speaking, the proportion was smallest where the raiyats were strongest. Of these so-called mahajans, however, but a small proportion were probably other than substantial raiyats themselves, for these are the chief money-lenders in rural Bengal. And further it must be remembered that sales to mahajans are far less likely to have permitted to remain unregistered than sales to any other class, especially to ordinary raiyats; it is not too much to suppose that, in places where the right of transfer had not been very clearly established, sales to raiyats would very often be concealed rather than registered.

15. The following figures showing (division by division) the number of occupancy holdings transferred by registered deeds during the year 1892-93 are taken from the Registration Report for that year :—

Division.	Number of transactions	Purchasers.					Price.	Number of years' purchase of the rents.	Remarks.
		Mahajans.	Landlords of holdings transferred.	Other landlords	Raiyats.	Others unspecified.			
1	2	3	4	5	6	7	8	9	10
							Rs.		
Burdwan . . .	29,856	6,423	964	970	13,730	2,036	21,17,129	17·4	The figures, especially in Orissa, are unexpectedly high. Perhaps in some cases, where holdings have been transferred in payment of debts, the amount of the debts rather than the market price of the holding has been entered.
Presidency . . .	7,354	1,011	131	425	4,028	1,540	4,02,937	7·9	
Rajshahi . . .	21,000	1,443	1,001	900	19,6[illegible]8	1,371	20,94,972	17·6	
Dacca . . .	17,130	1,273	216	1,313	12,839	1,995	13,79,040	14·7	
Chittagong . . .	17,716	1,339	146	2,143	14,158	1,677	12,10,874	12·9	
Patna . . .	14,300	2,131	225	1,774	8,090	1,437	12,40,276	17·1	
Bhagalpur . . .	11,096	1,736	131	996	7,401	940	7,31,121	17·6	
Orissa . . .	2,974	393	40	131	1,377	906	2,01,999	17·6	
Chota Nagpur . .	1,616	394	19	23	1,290	31	94,673	14·3	
Total .	111,280	16,136	2,141	7,880	87,650	11,720	94,03,300	13·9	

A comparison of this table brings out the following facts among others. The total number of transfers has increased by 163 per cent., and this increase has been general throughout the province. It has been least marked in the Presidency Division, where it has been 41 per cent., and most so in Patna, where it has been no less than 622·6 per cent. Still, notwithstanding the size of this latter division, the number of transfers was considerably below the number in Burdwan, Rajshahi, Dacca, and Chittagong. The proportion of

holdings transferred to mahajans fell from 14·2 to 12·8 per cent. The transfer to raiyats rose from not quite 68 to very nearly 70 per cent. The price calculated in terms of the rent rose in every division and on the whole increased from 9·6 years to 13·5 years' purchase. Upon the whole the figures, though showing a large increase of transaction, can scarcely be regarded as disadvantageous to the raiyats, or as indicating a growing tendency on their part to fall into the hands of the money-lenders. On the other hand, it is interesting to observe in the Registration Report the transfers of superior holdings to raiyats:—

	Total number transferred.	Purchased by raiyats.
Whole estates	1,022	144
Share in estates	13,762	2,502
Revenue-free properties	17,415	5,825
Intermediate tenures	44,012	14,479
Unspecified	21,109	6,547

16. The division showing the largest number of transfers of occupancy holdings is Burdwan, with no fewer than 28,856. Yet Rai Ishan Chandra Mitra Bahadur, Rai Nolinaksha Basu Bahadur, Babu Satya Kinker Sen, Babu Dwarika Nath Bhattacharjya, and the Collectors of Burdwan, Bankura, Birbhum, and Hooghly are said by the Commissioner to be of opinion that the effect of the Act has not been to place the raiyats at the mercy of the money-lenders, while only one gentleman (Babu Dakshineshwar Mitra) is of the opposite opinion. Raja Ban Behari Kapur takes an intermediate view and says that, though the number of cases in which holdings have passed into the hands of money-lenders has been larger of late, this evil does not exist to the extent generally believed, and is due more to the "sudden and enormous increase in the number of occupancy holdings brought about by the passing of the Act than to any increased power of transfer conferred by the Act." Raja Peary Mohun Mukerjee and the Collector of Midnapore think that a considerable proportion of the body of cultivators in the division are becoming more and more involved in debt, but deny that the increased power of transferring raiyats' holdings is the cause.

17. The extraordinary increase in the number of transfers of occupancy holdings in the Patna Division has already been noticed, but it is necessary to look into the facts district by district. The following table will show the

18. The principal points which this table seems to bring out are—

(1) The small number of transactions registered in the three districts south of the Ganges—Patna, Gaya, and Shahabad.

(2) The very small number registered in Saran.

(3) The somewhat considerable increase in Darbhanga, while the proportionate increase in transactions among raiyats is about double of the total increase.

(4) The very largely increased number of transactions in Muzaffarpur, a special peculiarity of this district being the large proportion of occupancy holdings passing into the hands of landlords, whether the landlords of the particular holdings or not, while the number of transfers to money-lenders is comparatively small.

(5) The especially large increase in Champaran, were on the other hand the proportion of transfers to mahajans is comparatively large.

The general results of the above comparison are supported by an examination of the figures in Statement B attached to the report of the Commissioner of Patna, No. 1089R., dated 29th January 1894.

It is worthy of notice that the registration figures of 1892-93 show 1,543, 1,412, and 1,351 transfers of raiyati holdings *at fixed rents* in the districts of Shahabad, Darbhanga, and Saran, respectively; and that there were 827 transfers of intermediate tenures in Saran, against 54 only in Champaran.

It is clear in Mr. Stevens' opinion that no uneasiness need be felt regarding the districts of Patna, Gaya, Shahabad, Darbhanga, and Saran.

The cases of Muzaffarpur and Champaran require further consideration. The following figures will show the total number of transactions in each of these districts from the year 1883-84 onwards:—

Year.	Muzaffarpur.		Champaran.	
	Total transfers.	Transfer to mahajans.	Total transfers.	Transfer to mahajans.
1	2	3	4	5
1883-84	988	181	261	44
1884-85	1,533	215	477	62
1885-86	970	92	405	83
1886-87	1,535	112	1,601	535
1887-88	1,961	188	2,087	285
1888-89	3,006	231	3,850	1,042
1889-90	4,798	326	5,011	1,491
1890-91	4,727	243	4,676	884
1891-92	4,958	401	5,715	1,274
1892-93	5,224	383	6,590	1,551

This statement shows a large and sudden increase in Muzaffarpur in 1888-89, followed by another still greater in the next year, since which there has been no great change. In Champaran the number of transactions was suddenly quadrupled in 1886-87, considerably increased the next year, much more largely increased in 1888-89, and again in 1889-90, when a check occurred followed by more than a recovery in 1891-92 and another large increase in the following year. In ten years the number grew twenty-fivefold.

The distinguishing feature of the Muzaffarpur figures, *viz.*, the large proportion of transfers to landlords, especially others than the landlords of the holdings sold, does not appear to have been noticed by the local officers; it per-

haps means the purchase of occupancy holdings by indigo planters. It will be observed from Mr. Hare's report that the Secretary to the Bihar Indigo Planters' Association, speaking for himself, is greatly in favour of giving the power to all tenants and strictly limiting the salami to be paid to the landlord in cases of transfer. The transfers to "other landlords" are more than three times as numerous in this district as sales to mahajans; and if any legislative interference is required it would seem to be in this direction, but the facts are not sufficiently well known, nor the evil (if any) sufficiently well established to enable the Board to give a decisive opinion.

19. In regard to Champaran, Mr. Blyth gives the authority of Mr. Gibbon for the statement that it was "the impetus to transfers of holdings given by the discussions on the Rent Bill, and not the Act itself, which has led to the increased number of transfers." The table given above does not appear to bear out this contention. It is questionable whether the raiyats of Champaran took more interest in the discussions than those of other districts; it seems more probable that the passing of the Act had the effect of stimulating transfers, and another cause still more probable is that of late years the competition for land, especially in the south of the district, has much increased. It will have been observed that the holdings sold realised no less than 22·9 years' purchase of the rent, but there is no information available as to the circumstances under which so high a price has been realized. The figures of the Registration Department might with advantage be re-examined. In Champaran as well as Muzaffarpur there appears to be generally reason for further enquiry into facts. In Champaran the large number of transfers to money-lenders is a peculiar feature, and it is desirable to ascertain what class of people these are. The Board propose that, with the approval of His Honour the Lieutenant-Governor, the Settlement Officers should attempt to ascertain in a certain number of typical villages in different parts of their charges what the nature of the transfers during (say) the last five years has been.

20. In reference to the allegation that there are many raiyats who are now under-tenants at a rack-rent on their holdings which have passed into the hands of mahajans, Mr. Stevens desires me to say that there is not much evidence in support of this position. Doubtless such cases occur, but it is believed that the usual course when the mahajan retains the land is for the old tenant to remain as an under-tenant sharing the crops. It is not clear that any more hardship is caused in this way than would be if the insolvent cultivator were ejected from his holding without the price of his interests. On the contrary, there appears to be in that case more danger of his sinking to the position of a

It will thus be seen that there is no greater tendency for the ownership of occupancy holdings to pass into the hands of money-lenders than there is for most other descriptions of landed property.

22. For such evils as are thought to result from such transferability as the law now in force allows various remedies have been suggested. It is to be observed that no one would have the power of *transferring occupancy rights* taken away by law. Even those who hold the highest opinions regarding the rights of zamindars would not do this. Mr. Savage, the able and energetic District Officer of Backergunge, would have the law altered so as to give the landlord a right to refuse to recognise any purchaser; he admits that there are many practical difficulties in the way, but thinks that there is no difficulty which is an insuperable obstacle to the grant to landlords of the legal power to protect themselves against the zimba system. This system is described in somewhat graphic language by Mr. Savage in his report. The essence of it is that when two zamindars fight one of them gains over some of his opponent's tenants, buys their holding, and gives the tenants leases on easy terms. The opponent discovers this, demands rent from the tenants, who refuse to pay and deny the relationship of landlord and tenant. A riot follows, the tenants are able to prove their possession, and eventually the assailant through whom they (at least nominally) hold escapes with a light punishment, if any, while the defending zamindar's party are severely punished and he loses prestige, and consequently his raiyats. Mr. Stevens is informed, however, that there is another aspect of this system, and that is that it is often the means of affording raiyats protection from the oppressions of landlords, and not improbably the knowledge that this weapon is in their hands is itself a discouragement to provoke them.

23. Mr. Power, Commissioner of Burdwan, "boldly" says that there is no such thing in existence in Bengal as an occupancy holding transferable by custom without the consent of the landlord. He admits that thousands upon thousands of occupancy holdings are transferred without the consent or against the will of the landlord, but not legally. In the opinion of the Board this is a somewhat rash statement; it is certainly opposed to the opinions of numerous high authorities. Mr. Power would recommend legislation on the following lines:—

(1) The landlord's consent should be necessary to all transfers of occupancy holdings or portions of such holdings.

(2) The landlord's consent must be paid for by a fee, say—

(*a*) for entire holdings in Bengal 12½ per cent. and in Bihar 25 to 50 per cent. of the annual rent, or in Bengal 6¼ and in Bihar 12½ per cent. of the price fixed between vendor and vendee, in which case the landlord should have a right of pre-emption;

(*b*) for portions of holdings quadruple the above.

(3) When a transfer is made without the landlord's consent, *he should* have the right of taking possession without suit and without notice other than fixing a bamboo on the land and of retaining possession till his consent had been accorded. Any arrangement made by the landlord while in possession should hold good for *the agricultural season, and no ad interim tenant should acquire* a right of occupancy in the land anything in the Tenancy Act notwithstanding.

The Board think any detailed discussion of these suggestions is unnecessary; they appear to be neither just nor practicable.

24. Mr. Forbes, Commissioner of Patna, holds that the Legislature should legalize, with certain limitations, a custom which has now gone too far to be

entirely put a stop to, and which is proved to be needed by the extent to which it obtains. "The transfer" (he goes on to say) "of occupancy rights in holdings or in portions of holdings should, with certain restrictions in regard to payment up to date of back rents, be made by law to be independent of the landlord's consent, with the proviso, however, that the transferee must be a *bonâ fide* cultivator, or at least a tenant of the same class as the transferor. If it be thought necessary, a salami on a scale prescribed by law should be allowed to the landlord; and this, in consideration of his power of veto being taken from him, it would, I think, be just and reasonable to allow." Against such a law, intended to be of general application, it is an obvious objection that the cases are very numerous in which the zamindar has no power of veto, and therefore could not be justly entitled to any salami. And Mr. Stevens has serious doubts as to the propriety of limiting transfers to cultivators, or (as at present advised) of prohibiting transfers to money-lenders. Such a limitation would diminish the demand for land, and probably lower its value, while impairing to some extent the credit or borrowing power of the raiyats. The difficulty would be especially felt in a time of pressure, when many raiyats would be wanting to sell, and very few, if any, wanting to buy. It should never be forgotten in discussing topics in which money-lenders are concerned that those people are not wholly mischievous. There are times when they are the great support and refuge of large numbers of raiyats; and where these money-lenders are themselves of the raiyat class and residents of the village,

of competition and tend to reduce the value of the holdings, and this would be the tendency as regards *all* holdings, while the abuses attending sales to mahajans affect only a portion in *any* district, and a very small portion (if any at all) in some.

Mr. Blyth would have legislation to declare all transfers of a part of a holding without the written consent of the landlord illegal and invalid as against any of the parties to the transaction. He would not allow any document relating to such a transaction to be registered, and would not allow the transferee to sue on such a transaction in the Civil Court. Section 88 of the Tenancy Act runs thus:—"A division of a tenure or holding, or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his consent in writing." It has been found in practice in some districts, and probably it is the case everywhere, that in the case of occupancy holdings this provision does not give the landlord sufficient security against the practice which it is its object to prevent, and that practically in spite of it very many such transfers are made. These are not communicated to the landlord, and he ultimately suffers both loss and inconvenience; while the difficulty thrown in the way of keeping up a proper record of rights is enormously increased. Looking to these facts, also to the fact that the policy of the Tenancy Act now in force is to give the landlord protection against these fractional transfers, it seems only fair that the law which experience has proved to be too weak should be strengthened. As at present advised, therefore, Mr. Stevens is inclined to the opinion that this part of Mr. Blyth's suggestion should be adopted; but he thinks that, before action is taken, this proposition should be distinctly submitted generally to both officials and the public.

27. The above is the only legislation which the Board would at present recommend. Mr. Nolan's opinion, which is that any change which may be made should rather be in the direction of extending than of restricting the right of transfer, commends itself to Mr. Stevens; but it does not appear to him that it is at present necessary to legislate for either purpose.

4.—Punjab Government's letter No. 231, dated 7th November 1888.

No. 231, dated 7th November 1888.

From—H. C. Fanshawe, Esq., Offg. Junior Secy. to Govt., Punjab, Civil Department,

To—The Secy. to the Govt. of India, Revenue and Agricultural Department.

In reply to your endorsement No. 217—71-1 R. of 11th May 1887, I am directed by the Lieutenant-Governor to submit, for the consideration of His Excellency the Governor-General in Council, the following conclusions regarding the enquiries made by Her Majesty's Secretary of State in his despatch No. 27 Revenue, dated 24th March 1887, under which a copy of a volume by Mr. S. S. Thorburn, entitled "Mussalmans and money-lenders in the Punjab," was forwarded for the opinion of His Honour.

Previous correspondence on the subject of indebtedness of Muhammadan agriculturists in the West Punjab.

*Foreign Department, May 1885, General, Nos. 13 and 14.

2. As the Government of India is probably aware already, and as Her Majesty's Secretary of State may have noticed in the Proceedings* of this Government, Mr. Thorburn prepared an official paper in the summer of 1884 on the subject discussed in his more recent volume. This paper was forwarded to the Punjab Government by the Financial Commissioner under his letter No. 1189 of 24th October 1884; and in my letter No. 507 of 23rd May 1885, in reply, the general views of the late Lieutenant-Governor, Sir Charles Aitchison, were conveyed to the Financial Commissioner, and the opinions of officers were sought on the questions raised by Mr. Thorburn. The replies received by the Financial Commissioner are contained in pages 923—985 of the printed volume forwarded herewith—Enclosure No. 1. Unfortunately most of the officers consulted have confined the expression of their views to two questions only, *viz.*, the extension of the period of limitation in cases of suits for simple debt, and the exemption from attachment and sale of a fair share of the produce of each cultivator. It will therefore be necessary to invite further opinions on certain other points, as will appear below from the examination of Mr. Thorburn's book.

Extracts from the records of the Office of the Financial Commissioner, Punjab, new Series, No. 11.

3. There is much in Mr. Thorburn's book which is in a very difficult form to answer satisfactorily, and a good deal of the volume appears to Sir James Lyall not to be written carefully or precisely enough to form a good State paper. Almost all of Mr. Thorburn's proposals are taken from the Dekhkan Agriculturists' Relief Act, or from suggestions which were put forward and discussed when that Act was before Council, and this should perhaps have been

consideration; and His Honour therefore proposes to adopt this plan, recording the opinions as at present held by him on the various questions raised as far as may seem necessary at the present stage of the discussion. Before doing so, however, Sir James Lyall wishes to draw attention to the fact, which is also stated by that officer himself, that Mr. Thorburn's experience has been confined to the western districts of the Province, where, while all the original landholding classes and the mass of the population are Muhammadans, the money-lenders are practically all Hindus.

Summary of Mr. Thorburn's book.

4. The first eight chapters of Mr. Thorburn's book are devoted—*first*, to a preliminary description of the Punjab, its history, its people (the Mussalman tribes of the West and the Hindus and Sikhs of the same tracts being separately discussed in Chapters IV and V), and its revenue system past and present; and *secondly*, to a more detailed examination of agricultural indebtedness throughout India, and the present condition of the Mussalman agriculturists of the West Punjab. In Chapter IX, pages 95—97, Mr. Thorburn sums up the position, as he believes it to stand in the west of the Punjab, in six propositions, as follows:—

Mr. Thorburn's six propositions.

"1.—The gift of full individual proprietary right—in which term is included the rights of occupancy tenants—so extended each man's credit that it enables him to borrow up to the market value of his holding.

Gift of property in land.

"2.—Punjab agriculturists were, and still are, unfit for such a gift, the vast majority of them being to-day, after 36 years of British rule, almost as rude, ignorant, and imprudent as they were upon annexation.

Unfitness of peasants for such a gift.

"3.—In tracts in which the outturn is uncertain, the rigidity of the land revenue system—which demands, crop or no crop, after each harvest time a cash payment equal to about the value of one-sixth of an average yield—together with a vicious but natural propensity on the part of the people to live for the day only, have involved a considerable and annually increasing percentage of them in serious or hopeless indebtedness.

Fixed cash assessments a mistake in rainless tracts.

"4.—The Acts, Codes, and Rules affecting the relations between ignorant debtors and educated Bunniah-creditors all tend to benefit the latter at the expense of the former.

Over-legislation.

"5.—Making due allowance for the consideration shown to agricultural debtors in the new Civil Procedure Code, Act XIV of 1882, and in the Law of Contract as interpreted in recent Chief Court Circulars and Decisions, the fact remains that agricultural indebtedness is increasing, and that, if the acquisition of rights in land by Bunniahs be not arrested, agrarian troubles will shortly arise.

Expropriation of peasantry by money-lenders.

"6.—No Government, particularly a handful of foreign sojourners, such as we are, can permit the hereditary landholding classes, who compose 'the people of the country,' to be subjected to 20,000 or 30,000 money-lenders—all men of no political weight. In the western half of the Punjab this consideration derives additional force from the fact that the 'people' all

Its danger for a government of foreigners.

belong to warlike Muhammadan tribes, and therefore look upon Hindu money-lenders with contempt."

The remedies which Mr. Thorburn proposes to meet this state of things are then discussed in the following four chapters, which are headed—

X.—Restriction on the free transfer of land;

XI.—Reform in the land revenue system in ryotwari tracts;

XII.—Civil Justice for Agriculturists; and

XIII.—Reforms in Civil Law and Procedure.

The specific measures which Mr. Thorburn recommends for adoption are as follows:—

Measures advocated.

(i) It should be made illegal for any person deriving profits from a shop or from money-lending to acquire any interest in land, except (*a*) in arable or pasture land in the immediate vicinity of a town or large village, or (*b*) manured and irrigated land elsewhere—page 102.

(ii) A fluctuating system of land revenue based on simple rates should be introduced into certain tracts mentioned on pages 108 to 114.

(iii) The following points in the matter of procedure should be attended to by Civil Courts in dealing with the cases of agriculturists—pages 112-3:—

(*a*) Courts should examine the plaintiff before summoning the defendant;

(*b*) The real issues should be ascertained by oral examination of the parties in one another's presence;

(*c*) Courts should disregard elaborations of procedure, and give decisions according to equity, justice, and good conscience;

(*d*) Courts should go behind bonds and separate interest from the principal due and decree only reasonable interest;

(*e*) Arbitration should be encouraged by restoring to the courts the power to modify awards by arbitrators;

(*f*) Courts should define the manner in which they recommend that decrees should be executed;

(*g*) Sales in execution of decrees should be conducted with more consideration; and

(*h*) Agriculturists should not be summoned to court at harvest times.

(iv). The following specific recommendations should be provided for by alterations in substantive laws:—

(2) That measures should be taken to reduce the number of returns and reports demanded of District Officers so as to leave them more leisure for their real administrative duties.

The first of these two proposals is, the Lieutenant-Governor considers, quite unsuitable for the Punjab in the form in which it is put. In lieu of it Mr. Thorburn has made certain remarks on the subject of an insolvency procedure for agriculturists on page 113 of his present book—*vide* also Appendix G. The second is under the separate consideration of the Local Government. Certain steps have already been taken in the direction indicated, and it is hoped that it will shortly be found possible to adopt far more extensive measures towards attaining the end in view. A full statement of the recommendations made by Mr. Thorburn in 1881 will be found at pages 935—953 of the volume of the Selections from the Financial Commissioners' Records.

Mr. Thorburn's first and second propositions.

5. With regard to the first proposition stated by Mr. Thorburn in his present volume, *viz.*, that the gift of full individual proprietary right has so extended credit as to enable each owner to borrow up to the market value of his holding, Sir James Lyall would remark that it is not generally correct to say that this gift was made by the British Government. Full individual proprietary right, with *power to sell or mortgage, was well established in many parts of the Punjab* before the advent of the British rule, and particularly so in the south-west of the Province, where the village proprietary form of property, which was the great bar to alienation by individuals in the past, did not exist. The second proposition, *viz.*, that the people were, and still are, unfit for such gift, the vast majority being to-day almost as rude, ignorant, and imprudent as they were upon the annexation of the Punjab, is much too strongly put in the opinion of the Lieutenant-Governor. It is, moreover, impossible for Government to go back from the gift made, which is in reality a necessary outcome of the development of individual rights and the gradual solution of the village communal bond; and the people themselves would not support the Government in carrying out any proposal of the kind.

"The gods themselves cannot recall their gifts."

Mr. Thorburn has not ventured to recommend the cancelment of the alleged gift of proprietary right, but has contented himself with suggesting that it should be made illegal for the moneyed classes to acquire lands other than lands of two highly artificial descriptions proposed by him. The Lieutenant-Governor thinks, however, that it is obviously impossible that any such rule of law could be proposed, or that, if imposed, it could be carried out. It may be necessary,—and Sir James Lyall is at present disposed to think that it probably will be necessary,—to take steps to check the alienation of lands to money-lending classes in the Punjab. But this cannot be done by such enactments as that suggested by Mr. Thorburn, or by introducing a system of high land revenue assessments and short periods of settlement, as has recently been suggested to the Local Government in another connection. Such measures as the Lieutenant-Governor thinks may prove feasible for the attainment of the result desired will be discussed below. It will be sufficient to state here that, in His Honour's opinion, Mr. Thorburn's proposed remedy against the alienation of lands to money-lenders is altogether impracticable.

Proposal that acquisition of land by money-lenders should be restricted and forbidden.

Third proposition that fixed land revenue demands are essential for execution of decrees.

6. In his third proposition Mr. Thorburn has intimated that next to the gift of the proprietary right in land the introduction of a fixed system of land revenue assessments in tracts in which the crop outturn is uncertain has been the principal cause of the indebtedness of the agricultural population of the Punjab. With reference to this, it may be remarked that the revenue demand of Government is probably not really equal to a full one-sixth of the average yield, as stated by Mr. Thorburn, anywhere in the Punjab outside a

few exceptionally favoured areas, and that in tracts of the nature described by Mr. Thorburn it is very much less than one-sixth, and possibly does not exceed one-tenth. The tracts to which Mr. Thorburn refers on page 108 of his volume are very vaguely indicated, and, so far as the Lieutenant-Governor can identify them, he believes that fluctuating assessments are not necessary and would be stoutly resisted by the people. The question of introducing fluctuating assessments is a very old question in the Punjab. It was hotly discussed more than 30 years ago when the districts of the old Mooltan Division were being first brought under regular settlement, and the higher Revenue authorities of the Province were then firmly opposed to the system. But the question was re-opened when the Montgomery District was being re-settled between the years 1869 and 1872, and since then it has been always prominently before the Punjab Government whenever a new settlement is made or an existing settlement is found to be working badly. The attention of the Financial Commissioner has already been specially invited to Mr. Thorburn's remarks in paragraph 7 of my letter No. 507 of 22nd May 1885, and the Lieutenant-Governor thinks that the Local Government may be safely left to deal with this matter itself. Government must in any case proceed cautiously and slowly in introducing fluctuating assessment, as such changes are right only when necessary in the interests of the majority, and the people generally and the leading men in particular are always opposed to them, at first at any rate. In all the cases mentioned by Mr. Thorburn, except Shahpur, it has been considered whether a fixed revenue system should be maintained or not, and where it has been maintained special orders have been issued for the careful revenue management of the tracts in question. As regards the areas in the Bannu District, Sir James Lyall would invite attention to paragraph 26 of his review of the Bannu Settlement Report, written when he was Financial Commissioner, and to paragraph 11 of the orders of the Punjab Government thereon. As regards the areas in Jhelum, special instructions will be found in paragraphs 10 and 12 of the reviews of the Settlement Report by the Financial Commissioner and the late Lieutenant-Governor. In the Dera Ghazi Khan District a system of light fixed demand was deliberately preferred to that of a fluctuating demand at the last settlement. In Rawalpindi no proposals for a fluctuating assessment were made by the Settlement Officer, but attention has been drawn in the final report to the necessity of considerate revenue management of the south-western part of the district in which the rainfall is precarious, and further attention will be directed to the subject when the report is reviewed by the Punjab Government. The district of Shahpur is at present under settlement, and it will be decided in due course whether the introduction of a fluctuating assessment is necessary and desirable in any tracts in

Remedy of introducing fluctuating assessment is essentially under the control of the Punjab Government.

ments data are shown separately (1) for the western districts treated by Mr. Thorburn, and (2) for the rest of the Province, and details are given as far as possible of transfers (*a*) to other agriculturists, and (*b*) to money-lenders. These data cannot be considered as more than approximately correct, as will appear from the explanations given below. In particular, it must be borne in mind with regard to them that the percentage of the area, cultivated and uncultivated, which has been sold or mortgaged in each district, is struck on the total cultivated area only of the district, and that no small portion of the apparently large increase of late years in the areas sold and mortgaged is due, especially in the western districts, in many of which the first regular settlement has been made within the last 15 years, to the great improvement in the record of all classes of agricultural changes which has been effected by the recent strengthening of the subordinate Revenue establishment of the Province. Prior to the year 1874-75, separate details for agriculturists and non-agriculturists were not given in the Revenue Administration Reports, and no detailed examination of the transfers to money-lenders is possible previous to that year. It may also be borne in mind, as regards the 14 western districts with which Mr. Thorburn's book is chiefly concerned, that transfers to non-agriculturists practically mean transfers to Hindus, and transfers to agriculturists mainly transfers to Muhammadans.

General statement of alienation of lands during the last 20 years.

Caution necessary in using these figures.

8. Taking the Province as a whole, it will be seen that, as far as statistics alone ago, both sales and mortgages of land are now apparently proceeding with much greater rapidity than was the case 20 years ago. The annual number of sales recorded has increased from 3,034 in 1866-67 to 25,932 in 1885-86, while the number of such sales to money-lenders has risen from 2,112 in 1874-75 to 6,659 in 1885-86. The area entered in the Patwari papers as annually sold has increased from 63,199 acres in 1866-67 to 2¾ lakhs of acres in 1884-85, and the purchase-money has risen from 4¾ lakhs in 1866-67 to 44 lakhs in 1885-86. Between 1874 and 1879 the average area sold to money-lenders was 41,000 acres. Between 1879 and 1884 this area reached 50,000 acres. In 1884-85, 87,000 acres were transferred to non-agriculturists, and in 1885-86, 67,000 acres were so alienated. The statistics for the year 1884-85 contain, however, some extraordinary items which require to be explained, and regarding which explanation has been demanded. The general result shown by these figures is that since 1874-75 1·0 per cent. of the total area of the Province, or 2·40 per cent. of the cultivated area, has been sold to money-lenders. It must be remembered, however, as above stated, that the percentages of cultivated area alienated, which are shown in the statements, represent the proportion which the total area, and not merely the cultivated area alienated, bears to the cultivated area of the district or province as the case may be.

Alienations by sale.

Alienations by mortgage.

Mortgages too have largely increased according to the figures of the annual records. On March 31st, 1875, over 11 lakhs of acres were stated to be in mortgage,—4¾ lakhs to agriculturists and 6¾ lakhs to money-lenders. Between 1874 and 1885 the area recorded as mortgaged, after deducting the area redeemed from mortgage, amounted to 2¾ lakhs of acres, a little more than half of this area passing into the hands of money-lenders. Thus at the end of 1884-85 there were 3½ lakhs of acres in mortgage, 18¾ lakhs being mortgaged to money-lenders. This latter area is 3·9 per cent. of the total area of the Province, and 9·9 per cent. of the cultivated area as above explained.

9. So much for the Punjab generally as a whole. The real importance of these data can, however, be judged only after reference to the remarks below. It will now be convenient to refer briefly to the statistics of the

eastern and western districts of the Province as shown in the statements annexed to this letter. The following table exhibits succinctly the relative importance of these two portions of the Province:—

Statistics of alienations in the west and east of the Province separately.

	Number of districts	Area in square miles		Population			Revenue
		Cultivated.	Total.	Agricultural.	Others.	Total.	
							Rs.
East	17	22,634	41,481	4,8[illegible]	7,410,6[illegible]	12,2[illegible]	[illegible]
West	14	14,174	61,212	5,[illegible],321	[illegible]	6,[illegible]	[illegible]
Province	...	37,0[illegible]	10[illegible]	10,[illegible]	8,319,[illegible]	18,[illegible]	[illegible]

From an examination of the statements of alienation for each of these two tracts separately, it will be seen that the area sold to money-lenders in the east and in the west is about equal, but that the proportion of sales to money-lenders to total sales is much greater in the east than in the west. This is true also of mortgages. The $31\frac{3}{4}$ lakhs of acres under mortgage in the Province are nearly equally distributed between the two tracts, but the area in the hands of money-lenders is $7\frac{1}{4}$ lakhs of acres in the west as compared with $11\frac{3}{4}$ lakhs in the east. Of late years, however, the proportion of alienations to money-lenders has been increasing more rapidly in the west. The progress of alienations to money-lenders may be conveniently seen from the following abstract statement:—

Alienations to money-lenders (000 of acres omitted.)

Year.	Sales.		Mortgages.	
	Eastern Districts.	Western Districts.	Eastern Districts.	Western Districts.
	Acres.	Acres.	Acres.	Acres.
1874-75	27	10	73	27
1875-76	25	12	64	18
1876-77	15	21	55	[illegible]
1877-78	21	17	91	28
1878-79	40	24	107	[illegible]
Average for five years	24	17	75	21
1879-80	22	28	58	[illegible]
1880-81	23	22	70	[illegible]
1881-82	21	28	42	51
1882-83	19	25	53	34
1883-84	27	34	45	[illegible]
Average for five years	22	27	53	46
1884-85	15	52	[illegible]	[illegible]

in the area sold and mortgaged in the Punjab. No doubt at first sight it would appear that this increase has been much greater and more rapid in the west than in the east, and that much more of the cultivated land must be involved in the former than in the latter. But the Lieutenant-Governor believes that the figures are deceptive in this respect, and that there is not really any strong distinction in the matter between east and west, taking each collectively; while as regards transfers due to poverty and evidencing real distress, His Honor is decidedly of opinion that, taken as a whole, such causes of alienation have been more extensively operative in the east than in the west. This view is confirmed by the fact already noticed that the proportion of the area purchased by money-lenders to the total area sold is much larger in the east than in the west, and this is also true of mortgages. Sir James Lyall's personal experience leads him to the same conclusion, *viz.*, that in the districts in which transfers are common in the east and west there is much more poverty in those of the east than in those of the west. In the latter transfers indicate less pressure, as there is more land available, fewer obstacles to transfers in the nature of land tenures, and older custom of sale and mortgage; and all these considerations must be taken into account in judging of the comparative indebtedness of the eastern and western portions of the Province. Again, in looking at the figures of percentage of area alienated in the west as compared with the east, it should be remembered that the percentages of cultivated area shown are specially misleading for purposes of comparison of the two tracts, for the reason explained in paragraphs 7 and 8 above. Much more waste is actually included in areas transferred in western districts than in the eastern owing to the abundance of waste land in the former and to a difference in the tenure of land. In the east separate holdings of small proprietors are generally of cultivated land only with a right to share in the small remaining common waste of the village. The area, however, of such common waste, corresponding to the share of cultivated land, does not usually appear in deeds of alienation or in the Patwaris' records of transfers. But in the western districts small properties are usually in the shape of both waste and cultivated land held in separate blocks, and the waste area will commonly appear in the deed of transfer. The real area involved is therefore more fully stated and contains more waste in the west than in the east. Finally, there are special circumstances which would lead to the expectation of a greater increase in the west than of the east in the statistics of the area transferred of late years. About half the districts of the east have been under British rule much longer. The rise in value of land and the attraction of capital to land began in them earlier. The increase of alienations would therefore be naturally much slower in these districts in the years to which the statements relate On the other hand, in the other districts of the east, which have only been under British rule for the same time as those of the west, the obstacles to transfer created by the village communal tenure are much more universal than in the west, where these obstacles do not generally exist, and where sale and mortgage have always been more common and more customary. In the Derajat Districts the great clearing up of titles and definition of rights effected by the first regular settlements which came to an end between 1874-75 and 1879-80 gave a great impetus to transfers, and induced a rush of capital to the land. The re-settlements of Mooltan and Muzaffargarh, coupled with better canal arrangements, had a somewhat similar result. On the whole, therefore, the Lieutenant-Governor does not consider the mere figures for the west more alarming than for the east as might appear, but rather the contrary.

Conclusion as to comparative indebtedness of the west and east.

10. But in both east and west there are districts where the transfers to money-lenders are serious and appear to be increasing, and where the fact requires Government

General conclusion as to the real import of alienations in the Province.

to consider if a remedy cannot be found and applied. Moreover, though alienations are probably not proceeding more rapidly in the west than in the east, there is a special danger in alienations in the west to which Mr. Thorburn has drawn attention, *viz.*, that they are mainly from the Muhammadan landowners to Hindu money-lenders. In the eyes of the Muhammadans of the west these Hindus hold much the same position that the Jews do in certain parts of eastern Europe. The passing of much of the land to these Hindus is no doubt therefore a special practical danger in the western districts; but the Lieutenant-Governor cannot consider that either the practical evil or the political danger is confined to these districts alone. All over the Panjab, except in certain tracts where there is a very sturdy, thrifty population, the passing of land from the old landholding classes to money-lenders has been going on for many years past in a slowly increasing ratio, as will be seen from the data in Appendix II, ever since the land began to rise in value, and the land-owners began to use their consequent credit and get much indebted. It has been explained in the preceding paragraph on what grounds the Lieutenant-Governor considers that indebtedness in the east of the Province is not less than in the west, and that alienations have not been specially rapid of late years. But it is impossible to examine the data contained in the Statements of Alienations appended to this letter without perceiving that in certain districts both in the east and west the land-owning classes are most seriously involved. These districts are—

East.	*West.*
Umballa,	Mooltan,
Jullundur,	Montgomery,
Gurgaon,	Shahpur,
Sialkot,	Muzaffargarh,
Hoshiarpur,	Bannu,
Gujranwala,	Dera Ismail Khan.

of late years, the Lieutenant-Governor has caused certain passages bearing on the subject to be selected from recent Assessment and Final Settlement Reports of the Province, and for convenience sake these are printed in full in enclosure No. III to this letter. It is not necessary perhaps at the present stage of the case to draw special attention to these, or to institute any detailed comparisons with regard to the data which they embody. It will be observed that in some cases the area shown as mortgaged at the time of settlement is considerably less than that entered in the Annual Revenue Administration Reports, and this is due no doubt partly to failure by Patwáris to record redemptions of mortgages, and partly to the fact that hypothetical or usufructuary mortgages of which possession was not taken were not recorded at recent settlements in the Punjab. The marked contrasts as shown by these extracts between the state of things in Gurgaon and Rohtak, in Umballa, Firozpur and Ludhiana, and to a less degree in Jullundur and Hushiárpur and in Ráwalpindi and Jhelum as compared with Hazára, Bannu, and Dera Ismail Khan, are sufficiently noticeable of themselves, and will doubtless lead officers in forming their opinion on the whole subject to search for the causes of these very different conditions of prosperity in adjoining tracts. The other passages in the appendix relate to the districts noted in paragraph 10 above as those in which the largest number of alienations has taken place. There are no recent reports of the Gujránwála, Gurdáspur, Siálkot, or Shahpur Districts, all of which are now being brought under settlement operations, and the subject of transfers and indebtedness is not specially noticed in the Final Settlement Report of the Muzaffargarh District by Mr. E O'Brien.

10. It will be convenient to notice in this connection a statement on page 87 of Mr. Thorburn's book, in which a view expressed in 1877 by Sir James Lyall when Settlement Commissioner in reviewing the assessment report of the Leiah Tahsil of the Dera Ismail Khan District, has been separated from its context and placed in isolated prominence, which is likely to mislead. This view is given in its proper connection at paragraph 701 of Mr. Tucker's Settlement Report of the Dera Ismail Khan District, which runs as follows:—

Notice of a statement by Mr. Thorburn regarding alienations in the Dera Ismail Khan District.

'In the Dera, Bhakkar and Leiah Tahsils the bulk of the mortgages are held by Hindus. As a rule the greatest amount of mortgage is to be found in well tracts. Proprietary rights in wells were clearly recognized under Native Governments, and a large portion of these well mortgages date back to pre-annexation days. The cultivators of *Sailaba* and Daman lands originally held the position rather of tenants than of proprietors, their rights being acknowledged only so long as they cultivated their lands efficiently. Such lands, therefore, were only mortgaged in the more settled tracts. To the present day there is but little mortgage in the river villages, where lands are liable to be washed away, and do not therefore afford sufficient security to the money-lender. In parts of the Bhakkar and Leiah Kachi the population is very much indebted, and there is no doubt that many of these small Muhammadan proprietors must eventually be sold up. As Mr. Lyall writes, 'all we can do is to amend anything in our revenue system which tends to hurry on the process. Only a minority of these men have proved fit for the improved status which we gave them: the majority will descend in time into the position, which suits them, of mere tillers of the soil, with enough to live upon, but no credit to pledge and no property to lose. Their original position under Native Governments was little better than this. It is of course the too frequent elevation of the despised Kardr or Hindu money lender over the heads of a naturally dominant Muhammadan population which is the worst part of the change.' "

The general application which Mr. Thorburn has given to the remark recorded by the Lieutenant-Governor is not accurate or justifiable. It was made

with reference solely to the small Muhammadan Inferior Proprietors (Adna Maliks) of the Indus low lands (Kachi) in the Bhakkar and Leiah Tahsils of the Dera Ismail Khan District, and had no bearing on the question of the general mass of Muhammadan proprietors of that district who are the descendants of the old lords of the soil. It will be noticed that in the case of the class to which Sir James Lyall referred in his remarks, the Settlement Officer expressly states that the indebtedness of the land-owners dates largely from a time prior to the annexation of the Punjab.

13. From this discussion of the general facts regarding agricultural indebtedness in the Punjab, the Lieutenant-Governor will now turn to Mr. Thorburn's fourth proposition, *viz.*, that Acts, Codes, and Rules in force in the Punjab tend to benefit the money-lending class to the prejudice of ignorant debtors, and to the consideration of the remedies suggested by Mr. Thorburn in this regard and detailed under heads (iii) and (iv) of paragraph 4 of this letter.

Mr. Thorburn's fourth proposition.

14. The first group of these consists mainly of proposed amendments in the procedure of the Civil Courts of the province, and may be dealt with somewhat briefly. The chapter of the volume in which they are discussed, Chapter XII, is too loose and diffuse to be answered as a whole, but Sir James Lyall would record the following remarks on the proposals (*a*)—(*l*) which have been extracted from it. It may be stated that by way of introduction that many of the reforms suggested are already provided for by law or are under consideration, and that if alterations in the directions indicated by Mr. Thorburn are really necessary, they can be effectually provided in His Honor's opinion only by a special measure similar to the Dekkhan Agriculturists' Relief Act.

Proposals placed in that group.

(*a*) *Courts should examine the plaintiff before summoning the defendant.*

(*b*) *The real issues should be ascertained by oral examination of the parties in one another's presence.*

(*c*) *Courts should disregard elaborations of procedure and give deci-*

tural Relief Act, and would apply only to suits in which one party was an agriculturist, the provisions of the Civil Procedure Code remaining unaltered in the case of other suits. All that is necessary in the way of directions to subordinate courts in the matter of accepting compromises or confessions of judgment can be done by instructions issued by the Chief Court.

(d) Courts should go behind bonds and separate interest from the principal due and decree only reasonable interest.

The Lieutenant-Governor doubts if anything in this direction beyond what is contained in the rules on pages 75—77 of the Chief Court Circulars is required *generally* in the Punjab. The decision of the Chief Court on which the above rule is based is for facility of reference reproduced in enclosure No. IV to this letter, together with the judgment of the High Court of Allahabad quoted by Mr. Thorburn at pages 126 and 191—195 of his volume, and a judgment of the High Court of Bombay on the same subject. If, however, on further consideration it is decided that an Agriculturists Relief Act is desirable for the Punjab, Sir James Lyall thinks that the Act might contain provisions similar to those of Sections 12, 13, and 14 of the Dekkhan Agriculturists Relief Act, *to take effect when specially applied from time to time to certain tribes and localities by order of the Local Government with the previous sanction of the Government of India.*

(e). Arbitration should be encouraged by restoring to the courts the power to modify awards by arbitrators.

By the provisions of Section 522 of the Civil Procedure Code, Civil Courts are at present obliged to give judgment in accordance with the award of arbitrators, and a somewhat elaborate procedure is required to validate awards. Formerly Civil Courts possessed the power of modifying awards, and Mr. Thorburn suggests that this power should be restored to them. The opinions of officers will be taken on this suggestion, and there is perhaps no reason why the two forms of arbitration should not usefully exist side by side. The Lieutenant-Governor considers that, if arbitration in the old form is to be effectually revived in the Punjab, this must be done by giving Civil Courts power to refer suits to arbitration without the consent of the parties, as is provided in Chapter X of the Punjab Land Revenue Act (XVII of 1887). Without a coercive power of this kind, the revival of arbitration would not, His Honor thinks, be possible now-a-days. If, however, arbitration is made compulsory in this way, Sir James Lyall would give the courts power to reject awards in whole or in part, as under Section 185 of the Land Revenue Act, and would allow an appeal from the decision of the court as in that section. The provisions of Section 15 of the Dekkhan Agriculturists Relief Act, which provide for compulsory arbitration, but give the court no power to vary awards, would not, in His Honor's opinion, be suitable to the Punjab.

(f) Courts should define the manner in which they recommend that decree should be executed.

As the law at present stands (Section 210 of the Civil Procedure Code) courts are empowered to direct the satisfaction of decrees for the payment of money by payments by instalments. If it were considered proper by the Judges, the Chief Court could issue a circular directing all courts to record an opinion in passing orders for a decree as to whether instalments are necessary or not, and in case the court considers them necessary to fix them, and the opinions of officers will be asked on this point also, as far as decrees for payment of money against agriculturists are concerned. The Lieutenant-Governor thinks that courts should also have power to fix instalments in directing the execution of decrees. This is provided by Section 20

of the Dekkhan Agriculturists Relief Act, and might be provided in the Punjab if a special Relief Act is passed for this Province. His Honor does not consider Mr. Thorburn's proposal, taken from Section 19 of the Dekkhan Agriculturists Relief Act, that courts should be allowed to recommend the discharge of debtors in certain cases, suitable for the Punjab.

(g) Sales in execution of decrees should be conducted with more consideration.

The specific proposal which Mr. Thorburn makes under this head is that cattle or grain attached by order of Court should be fairly valued and made over to the decree-holder at the valuation fixed. The Lieutenant-Governor thinks that courts executing decrees might certainly have power to offer, at the request of the debtor, produce or cattle attached to the decree-holder at a fair valuation, and should the latter decline to take these, might refuse to sell by auction for reasons to be stated (such as an unfair depreciation of price), and might release the property either absolutely or on security. Under the provisions of Section 141 of the Punjab Land Revenue Act, the execution of decrees against land or any interest in land or produce of land is effected through the Collector of the district. The Lieutenant-Governor would be disposed to extend this procedure, and to provide that decrees against the moveable property of agriculturists should also be executed in the same way. The opinions of officers will be taken on these suggestions.

(h) Agriculturists should not be summoned to courts at harvest times.

Rule 12 on page 50 of the Circulars of the Chief Court, 3rd Edition, lays down that in suits brought against agriculturists during the harvest season courts should be ready to listen to pleas advanced by defendants that they cannot conveniently attend on account of their agricultural avocations. It has been suggested by several officers, in the replies contained in the Selection from the Records of the Financial Commissioner, new series No. 11, that this rule does not go quite far enough, and the Lieutenant-Governor is disposed to agree in this view. Enquiry will therefore be made of the Judges of the Chief Court as to whether it would not be possible to extend the principle already contained in the rule, and to declare that agriculturists shall not be summoned in debt suits, or in the matter of the execution of decrees in such suits, during the periods of harvest operations, such periods to be fixed for each district by the Deputy Commissioner with the approval of the Divisional Judge. The opinions of officers will also be invited on this suggestion.

15. It remains to consider the suggestions put forward by Mr. Thorburn on page 111 of his book and noted under Class (*a*) at the end of paragraph 3 above. These two will now be noticed in their order.

the harvest next following of the defaulter and his family, and of any cattle exempt by" the ordinary law. It appears to the Lieutenant-Governor that what Government itself, which has the first claim to the produce of the land, has thought fit to forego, may well be foregone by mere money creditors of the agricultural classes; and should any Agricultural Relief Act be ultimately considered necessary for the Punjab, His Honor would include in it general provisions similar to those already enacted in the Land Revenue Act of the Province.

(2) *Exemption from imprisonment for debt of honest insolvents.*

Since Mr. Thorburn's papers were written, Act VI of 1888 has dealt with this question, and Sir James Lyall thinks that sufficient provision is made thereby in this regard.

(3). *Extension of the period of limitation.*

From a reference to the abstract on page 1006 of the Selection from the Records of the Financial Commissioner, it will be seen that the great majority of officers consulted are in favour also of the extension of the period of the limitation of suits for debt from three to six years. The Lieutenant-Governor can state from his own experience that it has been a common saying in the Punjab for years past that the "miád" (period of limitation) and "vakils" have ruined zamindars, and he is personally strongly in favour of the extension proposed, which he believes would be for the benefit of the whole country. Sir James Lyall therefore intends to consult the Judges of the Chief Court upon this point: and, if the Government of India have no objection to his doing so, will submit his recommendations for amending the Limitation Act of the Punjab in this particular, should his opinion remain unchanged after consulting the Judges. It may be hoped that the alteration contemplated, if approved by the Supreme Government, will have the effect of reducing the civil litigation of the Province. In Bombay the average number of suits in the tracts to which the Dekkhan Agriculturists Relief Bill was applied fell from 36,000 per annum to 17,500 in the seven years following 1879. The Lieutenant-Governor is further of opinion that the period of limitation for suits on registered bonds should be extended to 12 years, as in Section 72 of the Dekkhan Agricultural Relief Act. The opinions of officers will be taken on this point also.

(4) *The keeping of accounts in a business-like manner.*

In the early days of the British Administration of the Punjab, special measures were tried in this direction, but without success. The question was raised by Colonel Grey, C.S.I., in 1884, and the late Lieutenant-Governor, Sir Charles Aitchison, after consulting the Judges of the Chief Court and the Financial Commissioner, came to the conclusion that it was impossible to attempt any such plan as that proposed on page 150 of Mr. Thorburn's volume. With the opinions then recorded, and with the conclusion formed, Sir James Lyall agrees. At the same time His Honor thinks that good might result if the Judges of the Chief Court would draw the attention of all officers to the provisions of Section 34 of the Evidence Act, which declares that entries in books of account are relevant whenever they refer to a matter into which a court has to enquire *when* they are regularly kept in the course of business. The full meaning of this provision of law is not perhaps always grasped by the lower grades of Civil Courts, and His Honor will ask the Judges of the Chief Court to invite special attention to it, in continuation of the instructions on pages 23 and 24 of the Chief Court Circulars, 3rd Edition. His Honor also considers that, if an Agriculturists Relief Act is held

to be necessary for the Punjab, provisions requiring money-lenders to give receipts and render accounts might be inserted in it as in Chapter IX of the Dekkhan Agriculturists Relief Act. Beyond this, and beyond the assistance which decisions in cases will afford, the Lieutenant-Governor does not think it practicable to take steps in the direction indicated by Colonel Grey and Mr. Thorburn.

(5). *Extension of compulsory registration of bonds over 20 rupees.*

A preliminary difficulty which is likely to be encountered in the Punjab in working so extended a scheme of compulsory registration would be the organization of an establishment of Village Registrars. Without this it would be impossible of course to introduce compulsory registration to the extent contemplated. Enquiry has been made of the Bombay Government regarding the classes to which the Village Registrars belong and the educational qualification demanded of them, and the reply of that Government, on which the opinion of District Officers will be sought, is appended to my letter of to-day's date to the Financial Commissioner of the Punjab, which forms the fifth enclosure to the present communication. The Lieutenant-Governor is disposed to think that if the necessary agency could be provided for writing and registering deeds the proposed plan of compulsory registration would be a good and suitable arrangement for a country like the Punjab.

(6). *Exclusion of legal practitioners from the Courts of Munsiffs and Tahsildars.*

This was also suggested by Colonel Grey in 1881, but the Financial Commissioner, Sir William Davies, expressed himself unfavourably towards the proposal, and his opinion was shared by Sir Meredyth Plowden and Mr. Burney. Sir James Lyall is not disposed to differ from these high authorities, but he thinks that, as in Bombay, legal practitioners should be excluded from the courts of rural tribunals (such as Village Munsiffs) and Conciliators, if these are established in the Punjab, and that in all suits for debts between money-lenders and agriculturists, in which the debt is less than Rs. 500, the fees of legal practitioners should not be costs in the suit. The opinions of officers will now be sought on this point. Under the provisions of clause (3) of Section 80 of the Punjab Tenancy Act (XVI of 1887), and of clause (3), Section 18, of the Punjab Land Revenue Act (XVII of 1887), the fees of legal practitioners in proceedings before a Revenue Officer are not allowed as costs, unless the officer considers that they should be for reasons to be recorded by him in writing; and the Lieutenant-Governor thinks that this principle might be more widely applied with advantage in cases between money-lenders and agriculturists of a value not exceeding Rs. 500.

16. Two points still remain for brief consideration in the present communication.

Agriculturists Relief Act for the appointment of both Village Munsiffs and Conciliators. But His Honor is disposed to think that in most parts of the Province it would be better to appoint rural benches of three to five members in each jail or other local sub-division, and to empower a quorum of the members of such benches to be both Munsiffs and Conciliators, that is to say, Munsiffs for trying suits up to a limit to be fixed by Government in each case and not exceeding Rs. 50, and Conciliators in suits above the limit fixed to which an agriculturist is a party. As indicated in the recent correspondence on the subject which is appended to the letter to the Financial Commissioner, the procedure of such courts must necessarily be much less elaborate than that at present prescribed by the Civil Procedure Code, and it would probably have to be arranged that these decisions should not be appealable, but should be subject to control and revision by the District Courts. If after consulting the Revenue and Judicial Officers of the Province the appointment of Conciliators is not considered suitable in the Punjab, the plan of remitting half the institution court fees where the parties in suits between money-lenders and agriculturists come to an agreement at the first hearing is one that might be, in His Honor's opinion, adopted with advantage.

Brief general summary.

17. From the above summary it will be seen that Sir James Lyall, as at present advised, intends to seek the opinions of the Judges of the Chief Court and of the Revenue Officers of the Province as to whether action is necessary or desirable on various points discussed in the present communication. On all of these points the present views of the Lieutenant-Governor have been briefly indicated; and if on further consideration His Honor sees reason to retain them, he will ask permission of the Government of India to submit a brief draft of an Agriculturists Relief Act for the Punjab. The general lines on which this Act is likely to be framed must be clear, His Honor thinks, from a perusal of the present correspondence. *The body of the Bill would apply to the whole Province, and would* consist (1) of certain alterations of provisions of the Civil Procedure Code to apply to suits against agriculturists; (2) of sections empowering the Local Government to appoint Village Munsiffs and Conciliators and prescribe rules of procedure; and (3) of certain alterations of the Limitation Law and rules as to legal practitioner's costs. But in addition to these general provisions, the Bill would probably contain stronger provisions like those in sections 12 to 14 of the Dekkhan Agriculturists Relief Act, to be applicable to certain tracts or classes only when formally applied by the Local Government with previous consent of the Government of India. The Lieutenant-Governor does not wish to add unnecessarily to the present letter, which he fears has already run to a great length, and will not therefore repeat here what has been embodied in the above letters to the Chief Court and Financial Commissioner. A copy of my letters of to-day's date to the Registrar of the Chief Court and the Senior Secretary to the Financial Commissioner is herewith forwarded for the information of the Government of India (enclosure No. V.)

18. In conclusion, I am to express regret for the delay which has taken place in the submission of this reply to your endorsement of 11th May 1887. The subject is an important one requiring much anxious consideration, and it was thought desirable to obtain the latest available information regarding the working of Dekkhan Agriculturists Relief Act before expressing an opinion as to whether such a measure is desirable in the Punjab or in any parts of it or not. The Lieutenant-Governor trusts that he will be able to make a further communication to the Government of India, with the opinions of the officers consulted, before the close of the current Financial year.

5.—Punjab Government's letter No. 563 S. of 25th August 1891, with note by Sir J. Lyall enclosed.

No. 563 S., dated 25th August 1891.

From—H. C. Fanshawe, Esq., Offg. Chief Secy. to Govt., Punjab and its Dependencies,

To—The Secretary to the Government of India, Revenue and Agricultural Department.

In continuation of my letter No. 231 of 7th November 1888, and of the correspondence ending with your letter No. 661 of 28th March last, I am directed by the Lieutenant-Governor to forward, for the information and orders of the Government of India, the accompanying papers relating to the question of Agricultural Indebtedness in the Punjab.

2. These papers comprise—

(1) the opinions of the Revenue and Judicial Officers of the Province upon the various questions stated in my letters Nos. 232 and 233 of 7th November 1888, of which copies were submitted to the Government of India; and

(2) a note recorded by Sir James Lyall, which contains his present views upon this important subject.

A brief summary of the opinions of the officers consulted will be found among the enclosures of the letter of the Financial Commissioners, No. 737 of 26th November 1889, and for convenience of reference these have been recorded under their various heads in the two volumes which are forwarded herewith.

3. The Lieutenant-Governor regrets that so long a time should have elapsed before the submission of these papers. The subject is, however, one of first-class magnitude and great difficulty, and His Honor has not received, as he had hoped would be the case, any indication of the views of the Government of India upon the general questions raised in my letter of 7th November 1888. The papers now forwarded contain the full expression of the views of all the most experienced officers in the Punjab, and His Honor's note roughly explains in detail the legislation which seems to him required for the Province. Sir James Lyall does not therefore think it necessary to trouble the Government of India in the present communication with any further lengthy examination of the subject-matter of this correspondence, but I am to convey the following observations for the special consideration of His Excellency the Governor [illegible] Council.

5. In the next place, I am to say that Sir James Lyall strongly hopes that the view will not be taken that it will be better to attempt to frame one Act applicable to the Punjab and other Provinces. This would in his opinion mean not only delay, but in the end a law not adequate or suitable to Punjab requirements. The tenures in the Punjab are almost entirely peasant-proprietary, and the number of occupancy tenants is insignificant and must tend to decrease. The tenure of the occupancy tenants is also peculiar to the Province. The Punjab proper has only been from 41 to 44 years under British rule. The Delhi and Bhatti territories were non-regulation territories under an Agent to the Governor-General or the Lieutenant-Governor of the North-Western Provinces till the Mutiny. The Cis-Sutlej plains and hills territories were also non-regulation under Political Agents. The whole Province was in fact, down to some 25 years ago, a country roughly governed according to the spirit, but not the letter, of laws and regulations then applying in other parts of the Bengal Presidency, and according to rules framed from time to time by the Board of Administration, the Chief Commissioner or Lieutenant-Governor. It was only some 25 years ago that laws relating to civil justice and intended to be generally applicable began to be extended to the Punjab, and it is the unsuitability of parts of these laws to local circumstances and requirements which has landed us in the present difficulty. In the Despatch constituting the Punjab Board of Administration, the officers of Government were enjoined to maintain the village coparcenaries or communities in integrity. We had failed to do that in some parts of the North-Western Provinces and Bengal, but we cannot be said to have yet failed in the Punjab. We shall, however, in Sir James Lyall's opinion, fail presently if we do not take strong action; and there is less difficulty at present in taking such action in the Punjab than there would be in other Provinces, because, as already noted, the law as practically administered has hitherto differed considerably and been more favourable to the agriculturists.

6. With reference to the objections to legislation of the kind proposed, which may be raised on general principles of political economy, I am to say that these do not seem to the Lieutenant-Governor to have much practical weight. In the first place it must always be remembered that the population in India is not homogeneous to the extent to which it is in most European countries. It is a congeries of distinct races divided by religion and marriage laws and by hereditary differences of mind as well as of manners and customs. In the Punjab the commercial money-lending class generally differs from the peasant proprietary class as much as the Jews in Russia differ from the Russian peasants. In Russia the Jews are prohibited from acquiring land, and so are the Hindu money-lenders in Russian Turkistan, and the rate of interest they can recover is determined by rule. Again, as to the effects to be expected, the almost entire exemption up to date of agricultural land from compulsory sale or transfer in execution of decree or in insolvency proceedings has not, so far as His Honor can see, stopped agricultural progress or produced other evil effects. As to danger to credit, Sir James Lyall agrees with those officers who hold that the ordinary honest and thrifty agriculturist will not find his credit in any way injuriously affected, and that the less thrifty and dependable man will get all such loans as are necessary and within his means, though he may have to execute a registered bond before he gets a considerable loan oftener than he did before. Embarrassed and dishonest men will no doubt have difficulty, unless they can mortgage or hypothecate land or give good personal security. The Lieutenant-Governor believes that, under the measures now proposed, the huge number of suits at present instituted in the Punjab Courts by money-lenders against agriculturists, with a result very often at once ruinous to the debtor and

infructuous to the creditor, will be greatly reduced. Though the number of these suits is so great, it must be remembered that in this province of petty proprietors it is small compared to the number of agriculturists who have banking accounts with sahúkars and money-lenders. Many of these sahúkars still carry on their business according to old traditions, and in a prudent way, not aiming at getting possession of their clients' lands, and content to get by hook or crook a good interest on their capital as a whole. This they do by wholesale and retail buying and selling with their clients as well as by lending money. When they lend they do so at high interest, most of which they get if seasons are good, but much of which they remit freely if seasons are bad or other misfortunes occur to their clients. These men bring comparatively few cases into Court unless against clients who turn out exceptionally thriftless or dishonest, and, except that they will of course be still more unwilling to resort to the Courts than before, their manner of business will not be affected. There are, however, a large number of sahúkars who, since the value of land and the prestige attached to its ownership has gone up, deliberately aim in the conduct of their business at getting possession of their clients' lands, and who with this object encourage them to take improvident loans and to defer paying and let interest accumulate, and at last put them into Court when they are least able to pay. There are also others who lend recklessly at high interest to men they know to be improvident and dishonest, trusting to recover by prompt recourse to the Courts, much from one man and a little from another, and so make their business pay. The proposed law will no doubt discourage both these classes, force them to revert to a more old-fashioned course of business, and make them shy of recourse to the Courts except as a last resource. But the Lieutenant-Governor does not believe that it will make any of them abandon money-lending to the agriculturists, which is in most cases their hereditary business, and which they used to carry on when there were no Courts and no laws in the country, as the Hindu money-lenders still do among the Afghan independent border tribes. As it is, in many parts of the Punjab these men do business in this way at very considerable risk of being murdered by their clients. There have been several very daring cases of murder of these men by peasants indebted to them in the last two or three years, and such crimes might easily become numerous, and would be hard to repress.

7. In conclusion, I am to ask that the Lieutenant-Governor may be favoured with the views of the Government of India upon his present proposals by the earliest date which may be convenient, as His Honor wishes, if possible, after considering any instructions or suggestions which the Government of India may see fit to communicate, to appoint a committee of Punjab officers to draft a Bill on the lines of his note for consideration and submission to the Government of India before he himself lays down office.

who feel that unsuitability so keenly as to find a difficulty, as Mr. R. Clarke says, in repressing intemperate language in writing about it. I have the advantage of knowing more or less well all the officers, European and Native, who have given opinions, and am able to judge of their weight even when they give them without full argument. There is great unanimity on certain points, but on other important ones the men of most weight are much divided. But from the whole body of opinions as well as from the statistics it may, I consider, be safely assumed to be proved that it is a fact, as we have already reported, that, under the influence of indebtedness and of our present law and Civil Court procedure, transfers of land are proceeding in all districts in an increasing ratio, and in many with dangerous rapidity, and that measures to check this process, so far as it is due to the action of our laws and Courts, are required throughout the Province. The fact that by a large proportion of these transfers the possession of the land passes from the old agricultural classes to men of the old commercial money-lending classes greatly increases the political danger of this state of things; but, on the other hand, even transfers from one agriculturist to another agriculturist, so far as they are due to unsuitability of our law and Civil Court procedure to the condition and circumstances of the poorer agriculturists, are also a serious reproach to our system and tend to make our Government unpopular. The whole body of opinions and the statistics also prove that the indebtedness and transfers are not due, except perhaps in certain tracts, and there to a most insignificant degree, to too great fixity of the land revenue demand, or to any other fault in our revenue system which can be cured. No one ventures to say that we can go back from the gift of proprietary right, and it is generally admitted that it existed before our time, and that what we have really done is to make it more valuable, and thereby to promote its being encumbered and eventually transferred. But there is no opinion of any weight in favour of seeking a remedy by reducing the value of the proprietary right by high land revenue assessments and short-term settlements. Officers who are in contact with the agriculturists of the Punjab and in sympathy with them know how they would regard such a policy, and feel how little we can afford at the present day to shake the belief in the liberality and friendliness of our Government by adopting such an attitude. It was that belief, based mainly on the recognition of their right, and the improvement of their position in the early land revenue settlements, which reconciled the Punjabi peasant proprietors to our rule, though an alien one, and made them throw in their lot with us at the time of the Mutiny, and it is from these peasants that we have since recruited the bulk and the flower of our Native Army. Mr. Kennedy's phrase of "sullen acquiescence" is, I think, a true enough description of the attitude to our Government of a large part of the rural population of the Montgomery District. This is due to hereditary temper and to forest reservations and mistakes made in land revenue and tirni management. To other districts it would be a gross exaggeration to apply it, but we could easily make mistakes which would make it generally applicable, and that there has been a marked tendency to a decline of good feeling in many if not in all districts is [illegible] find sent.

2. After carefully that the less thrifty and dependam more strongly of opi- and necessary and within his means, thouen we last addressed the [illegible] a registered bond before he gets a considerable bt a *remedy is required*, before. Embarrassed and dishonest men will no doubt have form of the nature of the can mortgage or hypothecate land or give good personalich much can be effected. nant-Governor believes that, under the measures now priers of that Act should be of suits at present instituted in the Punjab Courts by The Chapters on Village agriculturists, with a result very often at once ruind be permissive in their

application as in the Dekkhan Ryots Act. I believe they will all be useful, at once in some tracts and in time generally. In drafting our Village Munsiff Chapter, I think we may get some good hints applicable to the Punjab from the Madras law. Another fact which points to the urgency of dealing strongly with the matter by special legislation is this, that, as I shall show later on, certain parts of our existing law, which are calculated to accelerate the transfer of land from agriculturists to money-lenders, such for instance as the provisions for imprisonment and insolvency of the Civil Procedure Code, have till quite lately been practically inoperative against Punjab agriculturists, but are now beginning to be used to deprive them of their lands, and our special rules under Section 327 of that Code, which have hitherto immensely retarded the natural effects of the general law, are too loose and vague to be continued much longer without alteration. We have in fact come to a point where we must soon make a decided change in some direction.

Considerations of how far the Act is suited to the Punjab.

3. I will now, as the simplest method of dealing with this very difficult case, go through the Dekkhan Agriculturist Relief Act, and see how far in my opinion a Punjab Agriculturist Relief Act could be based on it.

Chapter I.

Chapter I of the Dekkhan Agriculturist Relief Act would do for Chapter I of the Punjab Act with the omission of the local extent clauses, and of Section 2 A. As to "local extent," our Act might extend, I think, to the whole Punjab.

Chapter II.

Chapter II of the Dekkhan Agriculturist Relief Act could be adapted to apply to our Subordinate Judges' Courts. Its effect would be (1) to give the Subordinate Judges power to hear (a) suits by an agriculturist for an account unlimited in amount, and (b) suits of classes w, x, of certain limited values (whoever parties may be), and suits of classes y and z (when defendant is agriculturist in one case and when plaintiff is in the other) according to a certain simplified procedure (Sections 7, 8, 9), and (2) to prevent appeals from the decrees and orders passed by the Subordinate Judges under the Chapter. But to make the Chapter have sufficient extent to be useful in the Punjab, I think power should be taken in the Punjab Act to confer all or any of the powers of a Subordinate Judge of the 2nd Class under the Chapter upon Munsiffs of the 1st or 2nd Classes, and upon Special Judges and Benches appointed under Section 28 of the Punjab Courts Act. With a Chapter for Superintendence and Revision similar to Chapter VII, Dekkhan Agriculturist Relief Act, I do not think this would be dangerous, and the relief to Litigation would be great. I think it would be better than the Small Causes Court procedure for rural tracts at all events. The definition of class (x) suits would have to be amended so as to exclude suits for rent for agricultural land. Suits for damages might also probably be

Section 11 would be adopted in our Act. It is in accordance with the first instructions for trial of civil suits issued when we annexed part of the Punjab.

As to Section 12, I think that after the words "hereinafter provided" the following sentence might be inserted: "Provided that, when a registered bond or deed has been executed by the parties which purports to declare the amount of the creditor's claim at the time of execution thereof, the Court shall so enquire and take account from the date of the said registered bond or deed only, unless the debtor denies execution of the bond or deed, or alleges that it is voidable under the Contract Act for want of free consent, and the Court, for reasons to be recorded by it in writing, deems it advisable to enquire into transactions antecedent to the said bond or deed for the purpose of testing such defences to the suit." This proviso would of course give a great stimulus to registration, which would I think be good. I would leave the rules as to compulsory and optional registration as they are. The cost in time and money of registration is a heavy burden on business.

Amendment of Section 16 of Indian Contract Act.

After Section 12, I think a Section 12A might be added to following effect: "In suits and proceedings under this Act, Section 16 of the Contract Act shall be read as if it contained the following additional clause: Clause (3). When a person obtains a grossly unfair advantage from a person who is ignorant and improvident, or hard pressed by debt or want.' This is Mr. Benton's suggestion—see his opinion, page 70 of volume of opinions of Judicial Officers. It seems to me that with this addition to the Contract Act we might refuse to open accounts behind registered bonds and mortgage deeds, in the case of which we have generally some security that the debtor did deliberately settle accounts knowing what he was doing. There is no real security for this in the case of unregistered bonds or deeds, or balances of account struck in money-lenders' books.

Section 13 would have to be amended so as to be consistent with the principle of not going behind any registered bond or deed on the question of amount due at execution, so long as the bond or deed is not declared to be void. This might be done, I think, sufficiently by inserting the words "with a view to taking an account between the parties" after the words "under Section 12." In other respects our section would follow Section 13 of the Dekkhan Agriculturist Relief Act, except that I would leave out the words "or setting off the profits of mortgaged property without an account in lieu of interest," as this is a very old and common form of taking interest in the Punjab, and it is almost impossible to say to what the interest amounts, much or little, in such cases, and it would be very difficult to take the account. It is also a convenient form of agreement for paying interest for illiterate zamindars, which I do not think ought to be upset. The last words of this section embody the important principle that the Court after taking account shall not award interest in excess of principal. This, as pointed out in many opinions, is in accord with old Punjab native custom.

5. A section of the nature of Section 14 is I think very necessary, but I should prefer to add at the end of clause (*b*) the following proviso: "Provided that the Court shall not, except for special reasons to be recorded, award under this clause a higher rate of interest than 12½ per cent. per annum on cash (2 annas in rupee) and 25 per cent. or one-fourth per annum on transactions in kind." A rule of the kind, by which the Courts would ordinarily refuse to be instruments in recovering higher rates of interest in accounts between agriculturists and their creditors, would be in accordance with native feeling and old custom, and would not, I hold, prevent agriculturists getting necessary loans. It would prevent

Chapter III, Section 14—Limitation of interest to be awarded.

their getting improvident loans, and taken with the rule of interest not to exceed principal it would make creditors shy of going into Court unnecessarily and also shy of letting accounts run on too long. The principle that the Courts should award any interest agreed on, however exorbitant, rests, I suppose, on the Act of 1855 for the repeal of usury laws, which was extended to the Punjab in 1874. Before that, by the provisions of the old Punjab Civil Code, the Courts were directed not to decree more than 12 years' interest, and were empowered to cut down exorbitant rates of interest. Under the law, Regulation I of 1798, as to *bai bil wafa* mortgages or conditional sales still applicable in the Punjab, the lender cannot recover more than 12 per cent. interest, whatever the terms of the contract may be. This rate of 12 per cent. used to be called the legal rate in old Regulations and orders, and was commonly so regarded in early Punjab days.

Chapter III, section 12, Reference to arbitration.

6. Section 15, Dekkhan Agriculturist Relief Act, is very important. Some such section is in my opinion urgently necessary in our Act, as with creditors whose honesty is commonly open to the gravest doubt, and debtors who are commonly ignorant and illiterate, the *unregistered* bonds, deeds or account books produced in support of a claim are constantly quite unreliable, and so is the oral evidence in Court of witnesses produced by the parties. The consequence is that the Court, being satisfied that there have been dealings between the parties, and being unable to satisfy itself as to the details, ends by attaching a weight to the bonds, deeds, or account books to which it feels that they are not really entitled. Arbitrators from their knowledge of the persons and the locality are in a better position to judge in such cases, and if doubts have to be solved by guesses at the truth, they are better qualified to make such guesses, and it is better that this duty should be put upon a body of arbitrators, and not upon the Court itself. It was on this account that in the first rules for administration of civil justice issued for part of Punjab in 1847-48 the Courts were specially enjoined to refer questions of account and some similar questions to arbitrators. The same instruction was contained in the old Punjab Civil Code, which was treated as law till some 20 years ago. But the last clause of Section 15, Dekkhan Agriculturist Relief Act, which applies Sections 508 to 522, Civil Procedure Code, to the arbitrations by order of Court under it, would be

and check the tricks of those mortgagees who having got possession dishonestly oppose redemption.

They will also greatly check those money-lenders who encourage agriculturists to take improvident loans and to run deeply into debt with a view to getting their land by means of mortgages with conditions of foreclosure and sale.

These sections would of course apply to registered as well as unregistered mortgages. The only difference would be as to going behind the deed to take account.

Redemptions of mortgages and payments into Court.

8. Sections 15A and 15D (1) are in accordance with the existing Punjab law as to *bai bil wafa* mortgages, Regulation I of 1798, though I am not sure that that law is not overlooked. They will tend no doubt like the interest sections to restrict the borrowing credit of the agriculturist, but not I believe to a dangerous extent. I agree with those officers who think that the money-lending capitalists in the Punjab will and must go on loaning money to the agriculturists. What we want to do is to discourage those who lend not with a view to get back their money with interest, but with a view to get hold of the land by forcing the agriculturist to sell, or by selling him up through the Courts. It is the transactions of these men which come most into the Courts. I think that clause (2) of Section 15 B should run in our Act after the words "in writing" as follows: "either (*a*) instead of making an order for the sale of the entire property mortgaged or for foreclosure, order the sale of such portion only of the property as it may think necessary for the realization of that sum, or (*b*) with the consent of the mortgagor, transfer the mortgage of the whole or any part of the property mortgaged, with such modifications of the terms as may be agreed upon, to any person of the classes mentioned in Section 12 of the Punjab Laws Act who pays into Court the amount remaining payable by the mortgagor under the decree, or gives security for paying such amount within one month. Where security for payment in one month is accepted the Court shall postpone the case to allow of such payment being made." A similar addition should be made to clause (2) of Section 15 (*c*).

These additions would help to keep money-lenders from obtaining a footing in village communities by foreclosure or sale under deeds of mortgage, and would meet the views of many officers who advocate the extension of right of pre-emption to mortgages, which proposal does not seem to me advisable and presents many difficulties

Chapter III, Section 19

9. Section 19 and Chapter IV of Insolvency have proved I believe inoperative in the Dekkhan, and Section 19 should I think be omitted in our Act. I doubt whether any Insolvency law by which an agriculturist can be made insolvent except on his own application is wanted in the Punjab, or whether any could be devised which would not do more harm than good. I believe the existing Insolvency laws (Punjab Laws Act and Civil Procedure Code) have hardly ever been applied to them yet. See as to this my note on Chapter IV below.

Power to fix instalments in execution.

10. Section 20, giving power to fix instalments in execution, is I think much wanted in a Punjab Agriculturist Relief Act, as is held by the great majority of Punjab Officers, Revenue and Judicial. The power should be not only to fix instalments where none were fixed by the Court of decree, but also to revise instalments fixed by that Court; but, in the latter case, and in the case when the Court of decree had refused in writing to fix instalments, the Court of execution should record its reasons for revising or allowing instalments after hearing both parties and recording their statements. The Court of execution should also be allowed

to revise, for reasons given, any order passed by the Court of decree or by itself to effect that if any one or more instalments are not paid on due date the whole decree money will be recoverable at once.

If full powers of supervision and control are secured to District or Divisional Judges in the Act, I doubt if any appeal against orders in execution revising or allowing instalments will be necessary, but this is a question to be considered in drafting the Act.

Other safeguards in execution of decrees

After the above section I think we should want in our Act another section (1) directing the Court of execution to fix an upset price on cattle and other moveable property of agriculturists attached and to release the property absolutely or on security if that price was not bid at auction; (2) empowering the Court with consent of the debtor after the upset price was fixed instead of proceeding to auction to require the decree-holder to take the property at the upset price under penalty of either (*a*) auction at his risk to the extent of the difference if any, or (*b*) release of the property from attachment at his cost. The opinions of most officers are in favour of some provisions of this kind. The Court might be directed to fix the upset price as near as might be 2 annas in rupee or 12½ per cent. below the estimated full value. The price to be fixed by arbitrators if either of the parties objected to the valuation of the Court or of the officer deputed by the Court.

The section might also empower the Local Government to direct with regard to any district or tract that proceedings for attachment and sale or sale of agriculturist's cattle should be transferred to the Revenue authorities for execution. This is already the rule in the Punjab as regards all sales of agricultural land and standing crops in execution of decree.

Another section is also I think wanted in this Chapter modifying Section 258, Civil Procedure Code, by giving Courts of execution discretionary power to admit evidence as to and recognize uncertified payments out of Court in the case of illiterate agriculturists presumably ignorant of the law and also imposing on decree-holders under penalty the duty of certifying all payments. The law as it stands is too advanced for the mass of agriculturists and should be made laxer.

[illegible]

11. I think Section 21 goes too far, but that a section should take its place in our Act declaring that the Court, except for special reasons to be recorded, shall hold the agricultural judgment-debtor's unwillingness to sell or otherwise transfer or encumber ancestral agricultural land or land which he cultivates himself sufficient cause for inability to pay within the meaning of Section 337 A of Civil Procedure Code.

The [illegible] of the Rules of 1858-59 which are still in force under Sec.

12. I think Section 22, first clause, should be embodied in our Act, and take the place of our notification of September 1885, which with preceding rules on which it was based has had equivalent effect. But the last three lines of the section will have to be altered (if we leave out the Insolvency Chapter as I propose) by adding the necessary provisions of Sections 29 and 31 to the section, or as a separate section to be referred to. I think also that the words "not mortgaged or hypothecated as security for any other debt" should be added after the words "to the possession of which he is entitled."

Ancestral land exempted from sale in execution of decree.

But I think our section might be confined to ancestral land and houses and other buildings belonging to and occupied by the agriculturist debtor which would exclude acquired land and buildings and standing crops.

It may be strongly urged as to this section that it will be no new law in the Punjab as it was in Bombay or would be elsewhere; that in 1858-59, the Punjab Government saw applications to sell up lands of debtors in execution of decree were commencing and that money-lenders were beginning to recognize the value of land and to lend money to agriculturists with the express object of involving them and then getting hold of the land through our Courts; that seeing the unfairness of this to ignorant and improvident peasant proprietors and the political danger as shown in the Mutiny in the North-Western Provinces, they framed the Rules of 1858-59. The Punjab Government explained that it did not propose to abolish sale altogether because the knowledge that as a last resort it may be put in force will make landholders careful. The Governor-General in sanctioning the rules suggested that where decrees could not be executed by other means, and sale of land is therefore proposed, it might be leased instead of sold and proceeds applied to gradual liquidation of debt. This suggestion was not, however, acted on, and practically land was neither leased nor sold, and even standing crops were very rarely attached and sold. These rules have ever since made applications to sell land few, and all authorities, Judicial and Revenue, have discouraged such applications, which have been hardly ever granted as regards ancestral land and often refused as to acquired. The consequence was that till very lately the execution of decrees against agriculturists was practically confined (in the absence of mortgages with conditions of foreclosure or sale) to execution against moveable property or the person of the debtor. An active and persevering decree-holder could often bring pressure in these ways on an agriculturist debtor so as to drive him into selling or mortgaging part of his land by private contract; but as the Courts of execution were not disposed to press agriculturist debtors too hard, this did not generally succeed. Recent amendments of the Civil Procedure Code, exempting moveable necessaries, have made this method of compulsion more difficult to decree-holders; but on the other hand, by attaching land and without getting sanction to its sale moving the Collector to either get sanction to its sale or to take action under Section 320, the Civil Courts have lately begun to increase the temporary transfer of land in execution of decrees, and many of these transfers are equivalent to permanent transfers. We have been afraid in the Punjab to notify under Section 320 seeing that it would inevitably lead to far greater transfers of land in execution of decree than have hitherto been allowed. Sections 320 to 326 of the Civil Procedure Code which were introduced to moderate the free power of selling land by Civil Courts in other Provinces of India have had, or would have, quite the opposite effect in the Punjab so far as applied, which is a curious but not uncommon instance of the effect of enacting elaborate Acts for all India.

Rules in force in part prohibiting transfers of land by order of Court.

13. *Chapter IV—Insolvency.*—This Chapter has, I believe, proved inoperative in the Dekkhan, and in the Punjab where sale of agriculturists' ancestral property in

Chapter IV—Insolvency

execution of decree has hitherto been practically prohibited, and where the Insolvency provisions of the Punjab Laws Act and of the Civil Procedure Code (except quite lately in the case of the latter Act and then in a very few cases) have not hitherto been applied to agriculturists, I think such a Chapter would do more harm than good.

In place of this Chapter I would have a Chapter with sections declaring that no agriculturist judgment-debtor shall be declared insolvent under Chapter XX of the Civil Procedure Code, except on his own application to be declared insolvent under that Chapter; and that if the Chapter is applied at his request, the Court in determining under Section 352 of the said Code the amount of any claim of the nature referred to in Section 12 of this Act (the Punjab Agriculturist Relief Act) due by an insolvent agriculturist shall proceed in the manner prescribed by Sections 12 to 15 of this Act, both inclusive. Other sections should refer to the Insolvency provisions of the Punjab Laws Act, and should declare (1) that proceedings under them against agriculturist debtors shall be held in the Courts of Revenue Officers only; (2) that such Courts in inquiring into the amount of any claim against an agriculturist debtor of the nature referred to in Section 12 of this (Punjab Agriculturist Relief Act) Act shall proceed in the manner prescribed by Sections 12 to 15 of this Act, both inclusive; (3) that the Court may refuse to sell any or all of the agriculturist insolvent's ancestral land or buildings, and may instead thereof after excluding land and buildings required in his opinion for the support of the agriculturist and the members of his family dependent on him manage the rest for the benefit of the creditors by letting them on lease or making them over to the creditors on usufructuary mortgage for terms not exceeding 20 years; on the expiry of such terms of lease or mortgage the liability of the said lands or buildings or their rents or produce for the balance of the debt if any to be extinguished; (4) as in Section 51, Dekkhan Agriculturist Relief Act.

History of Insolvency law in the Punjab.

The history of the Insolvency law in the Punjab is curious, and requires to be borne in mind with reference to the above proposals. Till the Punjab Laws Act of 1872 was passed it was an open question whether the old Punjab Civil Code of 1854 had not full legal force, and as a matter of fact the local Courts treated it as having such force. That Code contained Bankruptcy provisions, but I believe they were intended to apply to commercial insolvents only; at any rate I know that they were generally so understood, and I believe they were in no single case applied to indebted agriculturists.

The Insolvency provisions of the Punjab Laws Act of 1872 were adapted with little alteration from the Bankruptcy provisions of the old Punjab Civil Code. Under this Act the only Courts invested with insolvency jurisdiction in 1872 were the Small Cause Courts at the large towns of Lahore, Delhi and Amritsar, and this was only for the purpose of dealing with commercial insolvents, as these Courts did not hear suits for debt against agriculturists. It had been held by the Punjab Government that the Small Cause Court procedure was not fitted to do justice in such suits, and after a short trial most of the Small Cause Courts first established had been abolished. No Courts have subsequently been invested with Insolvency jurisdiction under the Punjab Laws Act, but in 1877 an Insolvency Chapter appeared in the Civil Procedure Code of that year, and under it the Courts of all Deputy Commissioners were (which by the Punjab Courts Act of that time were the District Courts) [illegible] insolvency jurisdiction, but this Chapter only allowed judgment-debtors [illegible] made insolvent [illegible] applied [illegible] [illegible] Deputy Commissioner [illegible]

under this Chapter they were not agriculturists. No Punjab agriculturists, protected as they were and are by special rule against sale of land in execution of decree, would have so applied.

The provisions of the present Insolvency Chapter of the Civil Procedure Code, which allow the holder of a decree for money to apply to have his judgment-debtor declared insolvent with or without the consent of the latter, first appeared in the Act of 1882, and this most important change seems never to have been submitted to Local Governments for opinion. Again, two years later, in connection with the Punjab Reorganization Scheme, the Punjab Courts Act, XVIII of 1884, was passed, and by this the Court of the District Judge became the District Court, having Insolvency jurisdiction under the Civil Procedure Code. By this a great change was inadvertently made, for in most Punjab districts the officer holding the appointment of District Judge is a Native or European gentleman of the Extra Assistant Commissioner class. In a few cases he is either the Deputy Commissioner or a Junior Civilian. In other Provinces the District Court is the Court of the District and Sessions Judge, who is a Civilian of high rank and standing.

But in spite of this change down to the last two or three years the Insolvency provisions of the Act of 1882 seem to have been as inoperative against agriculturists as those of the Act of 1877. It was no doubt generally thought that as the Civil Courts could not sell land in execution of decree without sanction of the Commissioner or Financial Commissioner they could not be meant to have the power in Insolvency proceedings without the consent of the judgment-debtor. In the last two or three years, however, some lawyers have perceived in the Insolvency provisions of the Civil Procedure Code a way to get round the special rules prohibiting sale of ancestral land in execution of decree, and some District Judges have sold such land under those provisions, as will be seen from the remarks of Rai Buta Mal, Extra Judicial Assistant, printed in the Appendices to the Civil Justice Report of 1889, a copy of which is given below. These cases have, however, it is believed,, been very few as yet.

"Under the existing law, no property in land paying revenue to Government or applied to agricultural or pastural purposes can be sold in execution of decrees, except with the sanction of the Commissioner, and, if it is hereditary or joint acquired property, of the Financial Commissioner. Such sanction is accorded only in clear and exceptional cases, and if the letting value of the land is not sufficient and the Collector does not think fit to intervene, the decree, in the absence of other property which is generally difficult to find or indicate, remains unsatisfied. In the perplexity of checks provided by law, one way of compelling the sale of landed property, independently of execution proceedings, has been discovered. Thwarted by refusal of sanction by proper authority, the judgment-creditor applies, under Section 344 of the Civil Procedure Code, for the judgment-debtor to be declared an insolvent. The latter is so declared as if he had himself wished it, and all his property, moveable and immoveable, is vested in the receiver appointed under Section 351. The proviso of Section 336 requires that in any local area in which a declaration has been made under Section 320 and is in force no sale of immoveable property paying revenue to Government, or held or let for agricultural purposes, shall be made by the receiver. But as no such declaration has been published in the Punjab, that officer, unfettered by any restriction, proceeds to sell land as well as other property, and the object of the law in placing restrictions on the sale of landed property in execution of decree is frustrated. I mention this to draw attention to the anomalous state of the existing law under which a decree-holder baffled in execution may succeed in insolvency proceedings."

Chapter V—Village Munsiffs.

11. *Chapter V.*—Though the Village Munsiff system under this Act is said not to have been generally effective in the Dekkhan of Bombay, a similar system has worked well in Madras, and might, I believe, work well in many parts of the Punjab. I think a Chapter founded on this Chapter and on the Madras Act should be embodied in our Act, leaving much to be settled by rules made by the Local Government. The experiment could be then tried. I have consulted many

meetings of agriculturists in my tours in the last three years, and they are in favour of it, and so are many of the best Native officials. Many of the best opinions now collected are also strongly in favour of it. It may be added that on general grounds of policy it is very important to try to help the people to govern themselves instead of carrying on the whole administration through stipendiary officials. If the experiment succeeds as regards petty civil justice, it will soon be extended to petty criminal justice and other matters.

Chapters VI–IX.

15. *Chapter VI—Conciliators.*—The same remarks apply to this Chapter. I think the power may very usefully be taken and the experiment tried in selected tracts.

Chapter VII—Supervision and Revision.—A Chapter of this kind would be required, and I do not think the work would be heavy, not at any rate if the Insolvency Chapter is left out, and until Village Munsiffs and Conciliators are generally appointed. But the District Judge in Bombay is, I understand, equivalent to our Divisional Judge. I think our Divisional Judges would have to do the work. They would not have time by present arrangements, but if my scheme for amalgamating the Divisional Judge and District Judge sanctioned appointments, thereby increasing the number of Divisional Judges and creating a certain number of Assistant Divisional Judges appointments, were to be carried out, the necessary machinery would, I think, be obtained without extra cost, and without injury to the Judicial administration. A short description of that scheme is appended to this note.

Chapter VIII—Village Registrars.—This supposes that the Village Registrar will write the deeds or have them written under his skilled superintendence. I don't think we could supply the machinery, or that it is necessary to compel the registration of all instruments executed by agriculturists of which registration is now optional.

The modification I propose above of Section 13 will give a great impulse to optional registration, and that section by allowing Courts to go behind unregistered bonds and deeds and take account will make the necessity of registration to prevent injustice to ignorant men less in their case.

I think this Chapter may be left out in our Act. We are doing our best under the Registration Act to increase the number of non official Registrars.

Chapter VIII A.—I think this Chapter will be a useful protection to our agriculturists, and should be repeated in our Act, sections being added saving the procedure detailed in Sections 57 and 58 of the preceding Chapter which it is proposed to omit.

the old Punjab Civil Code did not allow Pleaders or Vakils to practise in the Courts. There was no Pleaders or Vakils Act till 1866.

Chapter XI—Miscellaneous.

17. *Chapter XI—Miscellaneous.*—Section 70. I am not sure that this section is required in the Punjab, though I believe that in late years verbal contracts with possession recognized by mutation of names in the Land Revenue Records tend to increase. Our Courts are not so likely to do injustice in such cases as in suits on written contracts. Whether the section should appear in our Bill requires more consideration.

Limitation.

Section 72—Limitation.—The majority of officers consulted and of the men to whose opinion I attach most weight are in favour of adopting this section, but there are also good men against it. Some of the arguments relied on by these officers are, however, met by the proposals to fix a maximum amount of interest recoverable through the Courts, to go behind bonds and balances struck and take account of principal and interest, and to refuse to carry out strictly the conditions as to sale or foreclosure of deeds of mortgage. The history of this matter in the Punjab is as follows: In 1856 the Chief Commissioner proposed to reduce the period in actions for debt on bonds or accounts, not being partnership accounts, from the then term of twelve years to six years. This was sanctioned by the Government of India. Two years later the Chief Commissioner proposed to leave six years as the period on registered bonds, partnership accounts, etc., and to make three years the period for other cases relating to debt on accounts, disputes between master and servant, maintenance, claims to hereditary fees, etc., etc. This was sanctioned in 1859. At that time I was an Assistant Commissioner in the Punjab, and much of my time was spent in hearing suits between sahukars or bankers and peasant proprietors. I remember that both classes complained strongly that the three years period was too short for their dealings and dislocated their old business relations, and many officers at that time thought the objection a sound one. The classes concerned are still strongly of the same opinion, and the agriculturists in particular attribute much of their indebtedness to the short period of limitation, asserting not only that the frequent writing of bonds for the balances turns interest into principal more rapidly than before, and involves their getting less "chat" or remission of interest than they used to do, but also that the expenses of getting these bonds written, witnessed, stamped, and sometimes registered, are very heavy, and that finally they are run into Court unnecessarily often and quickly either as a means of registering and securing the debt or of forcing them to sell or mortgage their land. I am convinced that this complaint is true, and I attach little weight to the arguments of those officers who argue that the law ought not to have these effects, that by acknowledgments in writing or part payment of principal or interest new periods of limitation can be obtained, and that the interest which capitalists demand and take depends simply on market rates and the security. These arguments belong to an atmosphere higher and drier than that in which these village bankers or money-lenders and these illiterate peasant proprietors carry on their dealings, without legal assistance or with legal assistance which is unreliable. The practice of demanding and agreeing to pay much more interest than you expect to get or intend to pay is ingrained among them, but when the lender has got his stamped bond or has launched his suit in Court, he is disposed to hold to the letter in the matter. So again the ordinary money-lender's ignorance of all but the broadest points of the law, and knowledge of the suspicion of fraud, perjury and forgery which pervades the Courts, induce him to be with good reason very shy of any but the simplest methods of securing himself against his claims being barred by limitation. Hence frequent bonds and frequent suits in Court with the result that the amount our Government takes out of the peasant proprietors' pocket in the shape of stamp duties of kinds is

very formidable, and to a large extent depreciates the lightness of our land revenue assessments. It must be remembered that almost everywhere in the *world where peasant proprietorship prevails, dealings with some kind of banker* are a general necessity of the peasant's business.

For these reasons I am strongly of opinion that Section 72 should appear in our Bill, and that the period of limitation in all suits of the description mentioned in Section 3, clause (*a*), should be six years, but whether the distinction made in clause (*a*) of Section 72 of the Dekkhan Agriculturist Relief Act should be repeated is I think open to much doubt. If it is intended to encourage registration, that is I think sufficiently secured by the proviso I propose to add to Section 12. In any case I think that twelve years is a dangerously long period of limitation for suits on registered bonds, looking to the fact that fraudulent personation before Registrars is always not improbable in India, and that ignorant debtors will continue to pay without receipts or will lose receipts if they take them. If, therefore, a special term is allowed for registered instruments, which I do not myself advocate, I would reduce it to nine years.

18. Section 73 should, I think, be repeated in our Bill, and also 73A, with the necessary verbal alterations in references to sections. Sections 74, 75, and 76 seem also necessary and suitable.

Sections 73—76.

I think we should also have in this Chapter a section declaring that from a certain date properly kept Day Books and Ledgers shall be deemed necessary to make books of account "regularly kept in course of business" within the meaning of the Evidence Act in dealings between bankers or professional money-lenders and agriculturists. This was proposed by the Chief Commissioner of the Punjab as a rule of law in 1858 and sanctioned by the Governor-General in 1859, but as it was not preserved by the Punjab Laws Act of 1872, it is obsolete. Some of the reasons given above in my note to Section 15 apply to this question, and the proposal is put forward by many officers in their opinions. I also think that, as suggested in Mr. Clifford's opinion (page 53 of volume of opinions of Judicial Officers) there should be a section declaring that balances struck in a banker's or money-lender's account book, and signed by the debtor and witnesses do not require to be stamped as bonds or promissory notes. This is the old and natural way of keeping accounts between agriculturists and their bankers, and it should not be hampered by the demand for stamps; and as by the proposal [illegible] the Courts will be able to go behind such balances and take account of interest and

Presumption for account books being duly kept.

6—Central Provinces Letter No. 1466 S.—212 of 11th November 1889, with Notes enclosed by Mr. Fuller, Mr. J. W. Neill, and Colonel Ward.

No. 1466 S.—212, dated 11th November 1889.

From—J. P. Goodridge, Esq., C.S., Offg. Junior Secy. to the Chief Commr., Central Provinces,

To—The Secretary to the Govt. of India, Revenue and Agricultural Department.

I am directed to acknowledge the receipt of your Under-Secretary's letter No. 736—149-2 of the 11th October, asking for information as to the result of the enquiries referred to in paragraph 8 of the Report on the condition of the lower classes of the rural population in the Central Provinces.

In that paragraph it was stated that enquiries were being made to determine the number and area of the estates in these Provinces which have changed hands since the last settlement.

2. I am now directed to submit copies of the following papers:—

(1) Letter from the Officiating Commissioner of the Jubbulpore Division, No. 5799, dated the 12th October 1888.

(2) Letter from the Commissioner of the Nerbudda Division, No. 5735, dated the 4th September 1888.

(3) Letter from the Officiating Commissioner of the Nagpur Division, No. 7525, dated the 2nd November 1888.

(4) Letter from the Officiating Commissioner of the Chattisgarh Division, No. 7110, dated the 19th September 1888.

(5) A Note by Mr. Fuller, the Commissioner of Settlements and Agriculture, reviewing the foregoing and submitting a statement showing the alienation of estates since settlement by Tahsils of Districts.

(6) A Note by Mr. J. W. Neill, Commissioner of the Jubbulpore Division, on the facts and suggestions set forth in No. 5.

(7) A similar Note by Colonel Ward, C. I. E., Officiating Commissioner of the Nerbudda Division.

3. It will be seen from the statistics summarised in Mr. Fuller's Note (paragraph 8) that about one-fifth of the malguzari area of the Province has changed hands since settlement, over half of these alienated rights passing into the possession of the money-lending class. Most of the alienations have taken place within the last 15 years. In some parts of the Province the area transferred is as high as 25 and 30 per cent. of the whole district area. It is also certain that the existing indebtedness of the land-owning class is in many cases so great, that the proprietors hold the land still left to them only at the discretion of their creditors. It is a fact, anomalous perhaps but true, that the owners of land are growing poorer while the value of the land is increasing; and the Chief Commissioner fears that the cause of this is to be found in the introduction of English notions of proprietary right and of the alienability of land into an Oriental community disqualified by hereditary predisposition and by training for meeting successfully the changed conditions of the country. As Mr. W. B. Jones observed when the matter was under discussion locally in 1873:—"On the face of the question the class which our rule destroys must be more sinned against than sinning. We cannot draw an indictment against half the people of India, and we may be quite sure whether we can see it or not, that we and our institutions are in the wrong, and not they."

4. Mr. Fuller in the opening paragraphs of his Note shows that the question of the indebtedness of the village proprietors of the Central Provinces and the best mode of dealing with it, has on more than one occasion been seriously considered by the Local Administration, and formed the subject of reference to the Government of India without eliciting from the Supreme Government any orders or declaration of policy. I am to invite a perusal of Central Provinces letter to the Home Department, No. 751-89 of the 13th April 1871, and of the papers submitted to the Revenue, Agriculture and Commerce Department with Central Provinces letter No 3203-167 of the 7th October 1874, and especially of the Minute by Mr. (Sir J.) Morris, then Chief Commissioner, which forms the principal enclosure of the last mentioned letter.

5. The discussion terminating in Mr. Morris' Minute originated in a pamphlet by Sir Raymond (then Mr. Justice) West of the Bombay High Court entitled "*The Land and the Law in India.*" Sir R. West proposed *(inter alia)*—

(1) To forbid Courts to decree compound interest, and thus give creditors no inducement to let their debtors get hopelessly involved.

(2) To give Civil Courts discretionary power to reduce stipulated interest on claims below Rs. 500. This limit was intended to mark a rough line between transactions entered into by villagers presumably able and not able to contract on equal terms with

(2) That the only lien recognized as admissible on landed property should be of the nature of a lease for a maximum period of ten years: the land being transferable to the creditor in full satisfaction of his claim for a fixed period not exceeding ten years.

(3) That the Court of Wards' jurisdiction should be extended to meet the case of indebted proprietors who might apply for its intervention.

(4) That no lien on landed property should be recognized in any Civil Court unless certified by the Deputy Commissioner to be properly chargeable upon the land.

Mr. Morris also pronounced in favour of Mr. Justice West's proposal for giving a legal basis to a system of family settlements of estates in the case of the wealthier land-owners.

7. The only one of these proposals which has hitherto received practical recognition is that regarding the extension of the jurisdiction of the Court of Wards; and paragraph 10 of Mr. Fuller's Note shows the extent to which this Administration has already taken advantage of the provisions of Act XVII of 1865 (the Central Provinces Government Wards Act). The present inadequacy of the District staff to the work of all kinds imposed upon it compels the Chief Commissioner to be chary of undertaking the management of encumbered estates of small size, and it is only when the family seeking assistance is of recognized social position and importance that, as a rule, the protection of the Court of Wards can be extended to indebted proprietors. The relief so afforded has, however, been considerable and is warmly appreciated by the class so benefited.

8. It was supposed that some protection would be afforded to the land-holding class by the provisions of Sections 320 *et seq* of the Civil Procedure Code (making over the execution of decrees against immoveable property in certain cases to the Collector) which are in force in these Provinces. The District officers take much trouble over these references, but the cases are comparatively few in which they can effectually intervene to prevent sale when the debtor is as deeply involved as he generally is before the creditor puts the Courts in action. The futility of these provisions is fully brought out in Sir C. Grant's Minute, which forms one of the enclosures of Central Provinces letter No. 3163-167 of the 7th October 1874.

9. In the letter regarding the condition of the poorer classes of the rural population, Mr. Mackenzie urged that the Courts should be empowered and enjoined to go behind the bond in the case of apparently usurious contracts, and grant equitable relief to agricultural debtors who had been led into improvident engagements. He quoted from judgments of the High Court of the North-Western Provinces passages which showed that this was already in some measure held by the Judges of that Court to be the duty of Civil tribunals, and he expressed an opinion that the Courts of the Central Provinces were not generally influenced by considerations of equity in deciding such suits. The Judicial Commissioner has since pointed out that by a Circular of his Court issued in 1867 the Subordinate Courts of the Central Provinces have been instructed as to their duty in this matter,—and Mr. Crosthwaite contends that they not unfrequently act upon these instructions. The Circular in question lays down as follows:—

(7) In no case should exorbitant interest be decreed in favour of a money-lender suing a peasant proprietor or cultivator or any person similarly situated (when the right to recover it is disputed), unless the Court trying the case is satisfied that the stated engagement on which the plaintiff seeks to recover has been

entered into by the debtor with knowledge of all the circumstances affecting his position, and his liability in regard to the creditor, and of his *entire free will*, with at the outside pressure of any kind. The Court may consider whether or not the contract was a prudent one—but with a view to setting it aside if improident, for that of course is entirely beside the Court's duty—but with a view to determining whether extreme inequitableness, from which, along with other circumstances, the existence of undue influence might be inferred, has or has not been manifested. Reference on this point may be made to the customs of the locality, the usage of parties similarly situated, and the rates for loans prevailing, so that the character of the transaction may be tested. The debtor need not be compelled by the Court to pay the entire amount of interest, in cash or in grain, if there be reason to believe that the engagement (whether evidenced by bond, or by agreement, or mortgage, the money-lender's book, or completed in any other mode) has been entered into through fear or ignorance. If, in any case, the amount of interest shall appear to have been agreed upon under circumstances which would render the awarding it contrary to the principles above referred to, the Court will only decree as much interest as may appear just under the circumstances.

10. With reference to this it may be observed, in the first place, that the instruction does not go far enough to be of any great value, though doubtless correct under the law as it stands. And, in the next place, the Chief Commissioner is satisfied from the enquiries he has made that, in practice, the Subordinate Courts as a general rule decree on the bond as it comes before them. They are only perhaps justified in doing otherwise if "undue influence" on the part of the creditor can be proved or inferred. The definition of "undue influence" in the Contract Act, Section 16, runs thus:—

"Undue influence is said to be employed in the following cases:—

thought little of the corporate tie of the family, nothing of the tie between it and its lands," with consequences which are now before us in the Central Provinces and many other parts of India, and which may one day lead to very serious issues.

12. Mr. Mackenzie is inclined to agree with Mr. J. W. Neill that it is now too late to adopt the radical measures advocated by Mr. Justice West, Mr. Morris and others in 1874, and to place restrictions upon the right of alienating landed property. Any such step would be regarded as a breach of faith on the part of Government which granted proprietary rights without restriction thirty years ago. Nor does the Chief Commissioner approve of the proposal to under-assess any encumbered mahal, and then when the mahal is transferred raise its assessment to a full one. The Land Revenue settlement of all mahals must be stable and unchangeable for the sanctioned term of settlement. Mr. Mackenzie agrees with Mr. Neill that, as a general rule, the Government ought not in the coming settlement to admit the indebtedness of the malguzar as a sufficient reason for assessing an inadequate revenue upon a mahal. Due consideration is always accorded to families having many co-sharers, or entitled on other grounds to especially lenient treatment; but, apart from this, the fact that the village proprietors have in their improvidence misused the boon conferred on them by Government at last settlement is, as Mr. Neill remarks, no reason for showing them special consideration in the matter of assessment now—at the expense of the State and the community at large. No mahal is assessed with a higher revenue than the malguzar can easily pay, while retaining the usual amount of proprietary profits. If the malguzar has assigned or encumbered his share of the assets, he and not the State should be the sufferer.

13. It is admitted, however, on all hands—even by Mr. Neill, who minimises (the Chief Commissioner thinks unduly) both the extent and importance of the evil—that something ought to be done to stem the torrent of indebtedness that is fast swallowing up the prosperity of both malguzars and cultivators in these Provinces. The policy of the Administration has been to render land a less desirable investment for the non-resident proprietor, by insisting on the performance of the duties legally attaching to the position of malguzar. This was a point much insisted on by the officers consulted in 1873. Tenants have at the same time been placed in a strong and unassailable position from which only their own improvidence can disturb them. The Administration also arranges, as far as the staff at its disposal will let it, for the protection and nursing by the Court of Wards of the estates of malguzars of good social position and recognized local influence. It endeavours by the extension of primary and secondary education to elevate the people to a higher platform of intelligence, but as to this it must be acknowledged that the progress of enlightenment is necessarily so gradual that (as Sir C. Grant remarked) "the landed classes will probably be ruined before they are regenerated." The question remains, what can the Government do directly to help agricultural debtors, with due regard to the fair claims of their creditors.

14. It was suggested in the Report on the condition of the lower classes of agriculturists that measures on the lines of the provisions of the Deccan Agriculturists' Relief Act, 1877, and the Jhansi Encumbered Estates' Act, 1882, would be a suitable remedy. Mr. Neill doubts whether the subordinate Civil Courts of these Provinces are competent to exercise the functions imposed on the Special Courts established by those Acts. But the Chief Commissioner never contemplated conferring these powers on all Courts indiscriminately. He would only empower specially selected officers: and he does not think there would be any difficulty in establishing at least one competent tribunal

in each district. It is undoubtedly true that to open up the whole of the transaction between debtor and creditor in every suit between a mahajan for and an agriculturist would be a task beyond the powers of the Civil establishments, but if the special tribunal could only be set in motion on the certificate of the Deputy Commissioner that there was a prepondence for the said examination, a reasonable limit might be placed on the number of such enquiries. The Courts generally might at the same time very well be given a free discretion in dealing with the matter of *interest*, as suggested by Mr. Justice West, and now again by Mr. Neill. They might be empowered and directed to disallow compound interest in all suits, and the old native rule of *tulwi dopat*—that interest should in no case exceed the original principal sum lent—might very usefully be revived and legalized. Doubtless creditors would set themselves to devise means of circumventing the law and the Courts, but a large measure of protection would be afforded to the agricultural classes, of which they could hardly fail to take more and more advantage, as the law became known.

15. The whole question is a large and difficult one, but the Chief Commissioner trusts that it will not on that account be once more allowed to pass out of sight.

Note by J. B. Fuller, Esq., C.S., Commissioner of Settlements and Agriculture, Central Provinces, dated 15th January 1880.

recall scores of cases in which it would have been much better for a ryot or a land-holder that he should not be able to borrow large sums of money quite so readily. For generations almost, Anglo-Indian and Hindu reformers have set before themselves and the public the great necessity for reducing the outlay on marriages and other ceremonies. Yet we all know that a great part of all the money spent on marriages is borrowed by the landed classes, who under the land sale law will be more than ever able to borrow and spend out of all proportion to their necessities. The consequence, then, of making the money market a little tighter for the land-holding classes may thus be in some measure for their essential advantage." *Mr. Nicholls*, amongst others, forcibly supported this view. He saw ground to believe that the indebtedness of land-holders would rapidly increase "as they seem to make the worst use of a demoralizing and fatal facility for selling or encumbering their family estates nearly up to their bazar value. The late unexpected and somewhat bewildering increase in the value of their proprietary rights has fairly turned their heads. The perpetuity and absolute nature of their tenures under the present settlement has been greatly and perhaps laxly 'talked up' to them." There was a consensus of opinion on the part of the officers then consulted that unless landed property was exempted from sale in satisfaction of decree, the newly-granted proprietary rights carrying the status and position of village headman would rapidly pass into the hands of new men—a revolution which it would be unsafe to risk. These views were in great measure accepted by the Officiating Chief Commissioner (Colonel Keatinge), who in letter No. 741-90, dated 14th April 1871, to the Government of India in the Home Department, reviewed the information and opinions which had been submitted, and expressed his conviction that although Government might view without apprehension the transfer of acquired land or of small properties (of a less value than Rs. 300), it should prohibit the sale of ancestral property of a higher value, as the liability of such property to sale could not, in his opinion, be allowed to continue in this part of India without serious political danger.

No orders were ever received from the Government of India upon this reference.

2. The question came again under consideration in 1874, when Mr. (now Sir John) Morris was Chief Commissioner, the immediate origin of discussion being Mr. Justice West's pamphlet on "The Land and the Law in India." Mr. (now Sir Charles) Grant and Mr. W. B. Jones, both then holding the office of Commissioner of Division, were invited to express their opinions on the views set forth in this pamphlet, and the notes which they recorded were circulated for the criticism of the other Divisional Commissioners and the most experienced of the District officers. At the same time an enquiry was set on foot to determine the proportion of the land-holding class who were at the time involved in debt. The information which was submitted showed that, notwithstanding the admitted lightness of the land revenue assessment, indebtedness was alarmingly on the increase. Over a third of the proprietary (malguzari) families in the Provinces were shown to be in debt, and the number which were heavily involved, though only amounting to 12 per cent. for the Provinces as a whole, was formidably large in some places. Thus, in the Narsinghpur and Hoshangabad Districts, nearly half of the proprietors were returned as being in this condition. All the officers who were consulted were at one in considering that indebtedness was rapidly on the increase, and that wholesale transfers of proprietary right were imminent. Some held that this was due to an active desire on the part of money-lenders

to acquire property in land as an investment for their capital; others that it was the result of the increased facilities for borrowing offered by the powers of sale and mortgage, but all agreed that the expenditure which debts were contracted to meet was in general wasteful and extravagant, and was due neither to any difficulty in paying the Government revenue, nor to that investment of money in land improvement which the grant of proprietary rights was expected to stimulate. With two exceptions (Mr. Carpenter and Colonel Newnham) they were also agreed on the urgent need of State interference to save the landed classes from their own imprudence.

ii. *Various remedies were proposed*, but nearly all amounted to the imposition of limitations on the right of transfer. Mr. Grant was in favour of lowering the value of land as a pecuniary investment by insisting more strongly on the responsibilities attaching to the position of landholder and by providing for the cancelment of settlement and the revision of the assessment in cases where alienation had taken place and the incoming proprietors failed to manage the property well. Mr. Jones, while admitting that the only real means of meeting the difficulty was to lessen the value of land as a means for raising money, considered that cancelment of settlement in cases of transfer was too stringent a measure, and would certainly be regarded by the people as a grave breach of faith. He joined, however, with Mr. Grant in advocating that more attention be paid to enforcing the responsibility of proprietorship, but the measure in which he would chiefly trust was the exemption of all *ancestral* land from Civil process, except on account of mortgages for debts which had been certified by the District Officer to be legitimate charges on the property. Mr. Law was in favour of going further than this, and would declare three-fourths of each ancestral estate to be absolutely inalienable, leaving a fourth part only liable to Civil process, and then subject to the conditions advocated by Mr. Jones. Mr. Carpenter would, if State interference was considered to be necessary, exempt land altogether from sale in execution of decrees, and would leave it liable only to transfer to the creditor for a term of years.

only to gratify an over-weening desire for ostentation and display." It was pointed out that, under the position which village proprietors held before the recent settlement, gross extravagance was restrained by the impossibility of borrowing more than they could meet from their incomes. "A course of lavishness had thus sooner or latter to be followed by a period of enforced frugality." The grant of proprietary rights had enormously increased their powers of borrowing by allowing them to make use of their land as security. "When the estate became the security on which money was borrowed, there remained no check on credit till the market value of the security had been reached; and this point gained, there must result in the majority of cases ejection and ruin. This is the fate which awaits a large section of those whom we acknowledged as proprietors at the recent settlement. The large increase which had of later years taken place in proprietary profits had in the same way contributed to tempt proprietors into debt. So it was that "the owners of land grow poorer while their land is daily rising in value."

5. The Minute was submitted to the Government of India with letter No. 3163-167, dated the 7th October 1874, in which Mr. Morris recommended, firstly, that all landed property be exempted from attachment or sale under execution of Civil Court decrees for debt; and secondly, that one or other of the following measures be adopted: (1) that a lien on land be deemed to be entirely liquidated by a usufructuary transfer to the creditor for a maximum period of ten years; (2) that the jurisdiction of the Court of Wards be so extended as to enable it to take under management the estates of indebted proprietors on their application; (3) that debts secured on bond be only recognised if certified in the first instance by the Deputy Commissioner.

6. In the following year Mr. Morris submitted a separate recommendation to Government (in letter No. 2814-126, dated the 6th August 1875,) that the making of loans of Government money might be sanctioned not merely for land improvement (as under Act XXVI of 1871), but also for the liquidation of debts subject to certain conditions of which management of the estate by Government was the chief. Particulars were given of an arrangement which had been adopted in certain cases under which the District Officer had accepted responsibility for the management of an estate at the request of its owner, and had been able to raise money for the consolidation of debts at a much lower rate of interest than the proprietor would otherwise have had to pay. It was urged that loans might not always be obtainable from private bankers on satisfactory terms, and that Government might reasonably undertake to provide the money. In reply, the Chief Commissioner was informed* that, in view of the confusion which had resulted in Oudh from the grant of loans for the relief of encumbered estates, the Government of India was averse to the introduction of a general measure of this kind into the Central Provinces, although it would be prepared to consider recommendations for loans in particular cases. At the same time approval was expressed of the plan of assisting indebted proprietors in deserving cases by a private arrangement of the kind described. It does not appear that any orders were passed by the Government of India on the larger measures proposed in Mr. Morris's Minute of September 1874.

* Letter No. 823, dated the 29th October 1875.

7. It may be remarked that the plan of taking over the management of encumbered estates by agreement with the proprietor is open to grave objections, in that it leaves the proprietor open to incur fresh liabilities. At the same time it did for some years, in the absence of a Court of Wards Act, furnish the means of saving a large number of proprietors from absolute ruin. The estates which were taken up on this footing were numerous and important, and formed a very considerable proportion of the large property under Government management which awaited the passing of the Government Wards Act

of 1887. Most of them have now been brought under the control of this Act by formally declaring the proprietors to be disqualified from management on their own application. At the commencement of 1887-88 estates managed for debt covered 3,010 square miles out of a total area of 8,919 square miles under management.

8. The subject of land transfers has been annually noticed in the Chief Commissioner's Reviews of the Revenue Administration of the Provinces, but the number of transfers occurring in each year is relatively small compared with the total number of estates in the Provinces, and the extent of the change which has been taking place is only apparent after the collation of the statistics for a considerable period. It was mentioned in the Chief Commissioner's Resolution on the Revenue Administration of 1886-87 that steps would be taken to ascertain the extent to which land had been transferred since the last Settlement, and in letter No. 401-S., dated the 14th May 1888, a searching village to village investigation was set on foot, a distinction being made between transfers to persons whose main occupation was money-lending or trade, and transfers to persons of the agricultural or land holding classes. The divisional reports are annexed. Their drift will be evident from the following figures showing the percentage of the *malguzari* area of each district, reckoned by its land revenue, which has been transferred during the period (generally about twenty years) which has elapsed since last Settlement. Land revenue has been taken instead of area as the basis of calculation, as it is a better indication of the value of the properties which have been alienated. But statistics based on area would closely approximate to those now given.

Division.	District.	[illegible]		
		[illegible]	[illegible]	Total.

The results of the enquiry indicate that one-fifth of the area in which proprietary rights were granted at last Settlement has been sold, that is to say, that the rights have merely availed the grantees to provide ready cash for expenditure. Rather more than half the area which has been alienated has passed to the ownership of men of the money-lending class. It is moreover clear that the greater number of the transfers have taken place within the last fifteen years. In 1874 it was admitted that there had been up to that time comparatively few sales by decrees of Court, and the ground for the grave apprehensions then entertained was the rapidly increasing indebtedness, not the number of actual transfers. Time has shown how completely these apprehensions were justified. At the present rate at which transfers are being effected, the whole area of the Province will have changed hands in another 70 or 80 years.

9. If figures are taken for tahsils, instead of whole districts, they are still more startling. A table is appended showing the percentage of property (reckoned by area as well as by land revenue) transferred in each tahsil of the Provinces. In some the area which has changed hands is exceedingly large. In the Banda and Hatta tahsils of the Saugor and Damoh Districts it amounts (on area) to over 27 per cent. In the Murwara tahsil of the Jabalpur District it is over 30 per cent., and in the Ramgarh tahsil of the Mandla District it is close upon 27 per cent. These tracts are alike in that a large proportion of the village headmen were even less qualified for the gift of proprietary rights than those of most other parts of the Provinces. A quarter of the Narsinghpur tahsil has changed hands, and nearly a quarter of the Seoni tahsil of the Hoshangabad District. The area transferred in three tahsils of the Nagpur District is over 26 per cent. It is, moreover, to be borne in mind that these figures only show part of the evil. Behind them is a mass of indebtedness with ruin in its train which will be rapidly accelerated by any enhancement of the Government revenue at revision of Settlement. The Deputy Commissioner of Narsinghpur shows that, apart from the fifth of the area of his district which has been actually transferred, another fifth is either mortgaged or has been saved by being taken under the management of Government, and he thinks that by the time the new Settlement comes round (in 1894-95), at least half the area of the district will have changed hands. I have explained to large numbers of malguzars the increased security of their position which has resulted from the decision of Government to assess in future *on actual assets* and to generally limit the share of the State to 60 per cent., but I have been struck with the indifference with which they regard the question Their one idea is to ascertain whether the Government proposes to take a substantial increase or not, as to many of them this will mean failure to pay the interest on their debts and consequent ruin, whether the percentage of the assets taken be high or low. It is fortunate that our first resettlements have been in the Chhattisgarh Division, where (owing principally to the absence of railway communication) indebtedness is comparatively small. The problems to be met in re-assessing the districts of the Jabalpur, Narbada, and Nagpur tracts will be enormously increased in difficulty by the degree in which the land is encumbered with interest charges.

10. The extent to which Government has assisted and is assisting indebted proprietors as managing their estates has been already touched upon. At the commencement of the last revenue year the area under the management of the Court of Wards (exclusive of course of Feudatory States) amounted to 8,018 square miles, one-third of which (or 3,040 square miles) was managed for debt. The debts with which this area was encumbered amounted to 12½ lakhs of rupees, equal to eight times the gross land revenue. If the large zemindari

estates of Chhindwara and Chhattisgarh which are under direct management to be deducted, the total area under management was 5,017 square miles, the proportion managed for debt being here also close upon a third. Speaking broadly, it may be said that in these Provinces a tract equal in area to a good sized district is under Government management owing to heavy embarrassment.

11. The experience of the past has shown very clearly that for this mass of indebtedness the grant of proprietary rights is not always possible. Another most important factor has been the opening out of the country by railway communication. The Great Indian Peninsula Railway was opened to Jabalpur and Nagpur at about the time of the last Settlement, and by bringing the Jabalpur, Narbada and Nagpur tracts into connection with Bombay, effected a revolution in the economic conditions of the country. Districts which had previously only local demand for their surplus produce and only the *bania*, bullock as a means of getting rid of it, were thrown open to the trade of the world, and the large increase in the demand for their produce which resulted, enormously added to the income from land and to the value of land as a means of raising money. This stimulated great extravagance, and the standard of expenditure on marriages and similar means of display reached a point which it was altogether beyond the real capacity of the land to bear, except in very favourable seasons. Had a policy been followed of making short-term settlements, the Government would have retained in its hand a means of control which would have been of greatest value to the people as well as to the State. By the recent decision to shorten the term of future Settlements, the Government of India has made the best possible provision for checking the growth of indebtedness in future. The resurvey operations which have now been commenced throughout the provinces have already had an effect in lessening the value of the land as a means of raising money, although the resettlement which is to follow is still generally five or six years distant. This effect can be regarded without the least dissatisfaction. It is abundantly clear to the [illegible]

the misfortunes of their neighbours, and now think twice before placing themselves in the money-lender's hands. But the lesson will be dearly bought if it involves the ruin of half of our old proprietors; and there is, moreover, the weight of existing indebtedness to be considered. I am strongly of opinion that Civil Courts should be empowered, and indeed required, to cut down interest charges on bonds in all cases in which the relative position of the contracting parties legitimately raises an inference that they did not meet on equal terms.

13. If the grant of a formal authority to Courts of Law to go behind the *written terms of contracts is deemed too sweeping a reform, I would still* advocate a more limited measure, which would legalize such action in the case of estates taken up by the Court of Wards, and I do not think that such a measure would be regarded as inequitable by the money-lenders themselves. Even as it is, in the great majority of cases when indebted estates are taken up, the Deputy Commissioner is able to compound with the creditors and to induce them to forego a large part of their claims for interest, if arrangements for prompt payment are made. I would give an arrangement of this kind legal authority, and would provide that, if any creditor insists on the payment of a larger sum than that pronounced to be fair by the Court of Wards, he must carry his claim into Court and show not only that it is due on his bond, but is also in itself fair and reasonable. Such a course seems to be justified in equity by the increase of security which admittedly results from Court of Wards' management. The high rates of interest which are commonly exacted are due quite as much to the character of the borrowers as to that of the lenders. The Bania may be greedy, but the ordinary agriculturist—be he landlord or tenant—is so dilatory and shuffling in repayment that money can only be extracted by driblets, and then after much dunning. When, however, an estate is taken up by the Court of Wards, the position of the creditor becomes infinitely more secure. He is practically certain of repayment, and moreover of punctual repayment. This explains the fact which at first sight seems so extraordinary, that while ordinary proprietors have commonly to pay 24 per cent. on their loans, the Court of Wards can raise money at 6 per cent. to help an embarrassed proprietor, on the understanding that it will undertake to manage his estate. The objections which may be held to apply to a measure which would generally interfere with the force of contracts seem to have very much less force were its application limited to cases where the creditor's security is enhanced by the action of the Government in taking an estate under management. Were this view acted upon, the extension of the scope of the Court of Wards would, I believe, offer an effectual remedy for much of the present embarrassment, and would go far to relieve the Government of the difficulty which will be encountered at the next Settlement. If the Government elects to let things be and to abstain from any interference whatever with the force of contracts, it will certainly have to choose at next Settlement between the relinquishment of a very large proportion of the revenue enhancement to which it is on every ground entitled, and the ruin and expropriation of a very great number of the present village land holders.

14. The expediency of enforcing the responsibilities which attached to the ownership of a village was strongly advocated by Sir C. Grant in 1874, and has been recognized by the Legislature in the establishment of an executive head for each village in the person of the mukaddam. In granting proprietary rights, the Government had in view the creation of a body of influential men who would have the incentive to improve their estates and keep their tenantry prosperous, which would spring from their position as landlords, and who would retain a sufficiently large share in the assets of their villages to enable them to

spend money on these purposes. The event has hardly borne out the hope, as the Government is in every way justified in insisting on the performance by proprietors of at least some part of the duties which its gift was intended to carry. By such a policy something will be done to discourage interest in land as a purely commercial speculation, and to lessen the facility for borrowing which has in the past proved so fatal to the landowning classes.

16. It would seem, moreover, that the Government would be perfectly justified in following to some extent the policy suggested by Sir Charles Grant of raising the land revenue in certain cases, the occurrence of a transfer. I would advocate nothing like a detailed reassessment. Our land revenue is a land tax, and, if fully and fairly assessed, should most certainly not be liable to alterations during the currency of Settlement on personal considerations. But it not unfrequently happens that the Government refrains from taking the full share of the assets to which it is entitled, on the ground that the exaction of a full share would give an increase which is larger than could be fairly imposed on the proprietor at a bound, having regard to his circumstances compared with those of his neighbours. It has been ruled by the Government of India that the share of the assets to which the Government is entitled is from 60 per cent. to 65 per cent., having regard to the incidence of the former assessment. But in many cases a lower share is taken from considerations which are purely personal ones and affect the particular proprietor in possession. Should this proprietor lose his rights, these considerations would cease to have force, and I would in such a case enhance the revenue up to a full share of the assets recorded at Settlement. To this end no local investigations of any kind would be required, as the enhancement could be effected by a glance at the records of assessment. The difference between the share actually taken and a full share would be viewed in the light of a drawback liable to resumption on a transfer taking place.

Note by A. W. Neill, Esq., C.S., Commissioner, Jalaiwar Division, dated

men of worth and influence. In a not inconsiderable proportion of cases I believe they were nothing of the kind. Many such parted with their rights without regret and without deserving to be regretted. Again, from the point of view of agricultural prosperity and the safety of the land revenue, the passing of land out of the hands of old Gond Thakurs and similar proprietors in the Jabalpur and Narbada Divisions, and of hangers-on of the old Maratha Government in the Nagpur Division, cannot be looked upon as a misfortune, nor do I think that any political danger or social evil has resulted therefrom in the present, or need be apprehended in the future. As for public feeling in the matter, I am unable to agree with those who express the view that it is a complete novelty or innovation to make immoveable property liable for debts, and that to make it liable is abhorrent to native ideas of equity. Where a right of transfer of interests enjoyed in landed property did not exist, such interests being purely personal could of course not be transferred. But I do not know that *any* property which a Hindu could dispose of as he liked was ever held sacred from his obligation to discharge his debts. Nor can it be denied that patels and malguzars have both under the Marathas and under our own rule always been liable to be evicted from their villages (and deprived of the interests to which the privilege of transfer and sale has now been attached) either when they become defaulters or when they did not agree to assessments proposed, and so forth. It is therefore no new thing to see villages changing hands.

This is only correct for a certain small number of districts, and only for parts of those.

A. M.

The old Gond Thakurs were men of influence in their day, and it is one of the great reproaches of our rule in native eyes that the old families that found employment under a native *regime* are now thrust into the cold. They may not have been model landlords, but they imagined that they had a right to live.

A. M.

As to this, see Sir R. West's pamphlet on 'The Land and the Law' and Mr. Neill's own letter (as Secretary) No. 741-903, dated the 14th April 1871, to Home Department.

A. M.

This was the case universally in the Central Provinces till we created and conferred proprietary rights.

A. M.

True; but the gift of proprietary right unduly stimulated the creation of debt.

A. M.

Yes—at the will or caprice of the Ruling power—and at the suit of a Marwari money-lender.

A. M.

I quite admit that I think it was a mistake to make patels or malguzars into proprietors; and that, having made them proprietors, it would have been right to do everything possible to prevent them from running into extravagance on the strength of their newly-acquired fortunes—but it would have been very difficult to do anything. To exempt land from attachment and sale by order of the courts in execution of a decree for money would, I fear, have done little good if the produce of the land could be attached and sold, and if the owner could be arrested and imprisoned, if the ancestral house could be sold and the ornaments on his women seized and auctioned.

It would have been quite feasible as starting to put restrictions on encumbrances and alienations.

A. M.

Per contra—If the security had not been so good, the lender might have been less liberal.

A. M.

The owner would be driven to sell in order to satisfy his creditor, so that he might escape constant persecution.

Nothing short of the absolute withdrawal of proprietary right would, in my opinion, be really effectual, and that would of course have been looked on then, and would be regarded now, as a breach of faith. It would be a most unpopular measure even with the landlords, I might say especially with them. When the Government of India passed orders on the *Chanda and Nimar Settlements in 1872 or 1873, an offer was* made to the malguzars to exchange their proprietary rights—which were liable

The right might have been limited at starting. I agree that we cannot well limit it *ex post facto*.

A. M.

to be sold in execution of decrees for debt—for a permanent heritable relationship; but not a single malguzar would consent to the exchange, though the offer was widely made known. Restrictive measures now would, I fear, be popular only with land holders who are already ruined, and who would like to repudiate their obligations and keep their lands; and I do not think it would be proposed to interfere with existing obligations where land has, for instance, already been mortgaged by conditional sale (the most common case when a large estate is involved).

A. M.

It has to be remembered, then, that nothing can be done for those who have already lost their lands, or for those who have already hypothecated their lands up to their full value. Is it certain that there remain so many more whom it is necessary to save from their own weakness and imprudence in the future, and is there not double danger attendant on interference that those for whom it comes too late will resent that fact, and that those whom it comes to save will not believe that the danger was so great as to warrant the demand from them of so great a price.

A. M.

Besides, do what we will landlords as well as all other classes will get into debt (it is extraordinary with what facility those even who have no property obtain loans), and it would always remain a question whether it is worse to have a class of impoverished landlords unable to do anything for their estates or assist their ryots, or to let new men take the place of the old landlords. Of all the suggestions made in 1874, the most fruitful was the one to insist on the duties of property and to make land-holding less profitable to the money-lender as an investment. Not only has that been done, but all tenants have been protected as far as it is possible to protect them against bad landlords. I think that, what with the obligation to have a resident muhaddam (or gomashta) in every village, the insistance on the performance of the muhaddam's duties, the patwari cess, the roots cess, the payment of all rents in the village, the unlikelihood of a great rise in land prices in the future (owing to the development of communications) as in the past, the huge subsidy of arbitrarily raising rents,—land will not offer an unfavourable investment in the future, while Mr. Fuller also points out that the short settlements to be made in future will lessen the value of the land.

relinquish a large part of the legitimate enhancement that could be claimed, or see a large number of the present landholders ruined and expropriated, I cannot but think it would be right to risk the latter alternative. The Government cannot be expected to make a further gift to these men who have made so bad an use of the gift of proprietary right. It would be unfair to the other sections of the community and would hamper the Settlement, while it is by no means certain that an unduly light assessment will save these men. It is much more likely that the ultimate ruin of most is inevitable, though individuals less undeserving than most may be saved by taking the estates under the Court of Wards.

There is a good deal to be said for this view.

A. M.

I look upon the plan of under-assessing the estates of impoverished landholders and, on the occurrence of a transfer of the estate, raising the assessment to the full amount as quite futile. It will not help the landholder in the slightest degree, though it may prevent the creditor from foreclosing on the estate quite so soon, for the Government will be paying part of the interest on the mortgage or debt.

I am not in favour of enhancing the revenue of an estate on transfer during the currency of a Settlement.

A. M.

It is said that it is fortunate that the first revisions of Settlement have taken place in the Chhattisgarh Division, but in that division the area of land which has changed owners is only very slightly less than in the other divisions, though it may be the case that the landholders are not so much burdened with debts.

As for the other suggestions made, that the Court of Wards should be utilized to settle and pay off the debts of landholders, and that it should have power to compel creditors to accept compromises, and that the Civil Courts should be authorised to go behind the written terms of contracts and cut down interest in all cases in which the relative position of the parties raises an inference that they have not met on equal terms, I doubt very much whether they would prove successful in practice. I do not think the Court of Wards could deal with a large number of small estates: it would probably have an enormous task before it, and I question whether it would eventually save many who, if left alone, would not have managed to save themselves. The landholders would be saved some amount of interest, but they would have to pay tolerably heavy management charges, and till their debts were repaid no improvements could be made on the estate.

It certainly could not.

A. M.

We know that the Court of Wards does save many estates from ruin which would otherwise have overtaken them.

A. M.

As for Civil Courts going behind the contracts between parties and cutting down interest when they appear not to have been on equal terms, it would not be by any means so easy to do this as it seems. The contract sued on may be the final outcome of a long series of transactions which a Court would find the greatest difficulty in tracing out. Evidence on matters of quite recent occurrence is difficult to be got. How much more difficult would it be to obtain evidence regarding matters that occurred long ago. Many debts have descended through generations; or else take the case of A borrowing from B to pay off a decretal debt to C, the Court would be powerless. There would be constant disputes as to what is meant by the parties being on equal terms: are they on equal terms when they both thoroughly understand what they are about, or are the terms unequal when the one has a great need for money and must have it at almost any cost?

There is a distinction to be drawn between an examination of the whole transaction between the parties, and a dealing with the matter of interest only.

A. M

We won't say how we feel on this question. We must assume that the agriculturist needs protection.

A. M.

Note by Colonel H. C. E. WARD, C.I.E., Commissioner, Narbada Division, dated the 21st April 1889.

I have read these papers with much interest, and will not trouble you with many remarks, for the subject has been so fully dealt with.

I think with Mr. Neill that the time has passed for restricting the right of transfer in land: but I cannot see why the Government of India should not introduce a usury law. If based on the old principles of Hindu Law, it would commend itself to the Hindu and Mussulman community alike, and though it might come too late to improve the position of an already over-burdened agricultural population, it would go far to save the rising generation. I doubt whether it would be possible to give any such enactment retrospective effect,—so that all we can do is to think for the future.

Whether the fact of these numerous transfers is an unmixed evil, may be open to some question. In the case of those old yeomen spoken of by you in your Junior Secretary's letter No. 915 S. of the 25th July 1888, to the Secretary to the Government of India, Revenue and Agricultural Department, the Government is an undoubted loser. But take the case of Mandla: there the people on whom proprietary rights were conferred had in many cases neither right nor title, and had to be persuaded to accept the gift. So much was this the case, that in 1886, as Settlement Officer, I brought the matter to notice and suggested that Government should retain in its own hands the proprietary rights which people neither wanted nor understood. My suggestion did not commend itself to the Administration, and proprietary rights were conferred on those who would accept them.

The State, I think, loses little by the transfer of their rights on the part of men of this description, and their position would hardly warrant legislative interference on their behalf.

I have seen similar features in other districts; still these are isolated cases which do not affect the question as a whole.

I have also done much in Saugor and Jabalpur in the way of managing encumbered estates for the benefit of both debtor and creditor, and time has shown me that the result has been very disappointing.

I can hardly remember one estate, which I have saved for the father, that has not been ruined by the son within a few years of his succession to it unencumbered.

The careless extravagant nature of the people is the real difficulty that we have to meet; and until that nature changes, I fear no legislation that we can hope for will save them from the burden of indebtedness.

If you introduce an Encumbered Estates Act, there is always the difficulty of managing these estates properly. My experience of our management of estates under the Court of Wards is hardly encouraging. In all large districts the work of the Deputy Commissioner is so heavy that I hesitate to recommend any course that would add to this work. This matter is, however, certainly simplified by your having ensured that the money to pay for good management shall be available by the 2 per cent. rate.

It is curious to contrast the position of the Central Provinces agriculturist with that of his neighbour in Bhopal. Here, too, we find a similar state of indebtedness: throughout whole tahsils I have found perhaps only three cultivators who sowed their own grain: every other man was entirely in the hands of the village money-lender, and the State official's first duty is to recover the mahajan's advances for seed grain in kind before the State demand for revenue. There only *Sawai* interest is allowed on these grain advances, and no com-

of the difficulties in the way of imposing restriction now on the right of transfer; it is always difficult to retrace our steps. But he has not the least doubt that it will be easier to retrace our steps now than later on, and better to admit that a mistake has been committed while yet its effects are not beyond recall. As to the limitations which should now be placed on the right of transfer of ryots' holdings in these provinces, the Chief Commissioner would be prepared to make recommendations if the Government of India so wished. The matter was very fully discussed in connection with the Bengal Tenancy Act. The recommendations made by the Bengal Rent Commission was that sale by private contract or in execution of a decree for arrears of rent should be recognized, but that sales in execution of other decrees should be prohibited.

4. The Chief Commissioner should, perhaps, apologize for this digression from the context of your letter under reply, but the importance of the subject must be his excuse. Returning to the strict limits of the reference, I am to say that the Chief Commissioner has personally (he has not had time to consult local officers) carefully considered the proposals for legislation contained in pages 76 and 77 of the Commission's Report, and he accepts each of them. He indeed considers them palliatives more than remedies. But they all touch undoubted evils and good may be expected from their operations, more especially when the local courts are officered by men competent to deal with questions of intricacy. The Chief Commissioner also accepts the alterations recommended in the ordinary law, it being understood that the system of village munsiffs and conciliators is not to be of general application, but to be extended under the Chief Commissioner's orders according to circumstances.

5. In conclusion I am to say that, when the promised draft Bill is circulated for criticism, the Chief Commissioner will have an opportunity of offering a further expression of his views.

6. I am to forward herewith a copy of a memorandum prepared (under much pressure of other work and at short notice) by the Commissioner of Settlements and Agriculture. Mr. MacDonnell desires to express his general concurrence in Mr. Fuller's memorandum.

Memorandum on the report of the Poona Commission by Mr. J. B. Fuller, Commissioner of Settlements and Agriculture, dated the 29th September 1892.

Excluding the large proprietors known as zamindars, the classes who possess a transferable interest in their land in these Provinces are—

(1) the village proprietors or "malguzars;"
(2) plot proprietors (called "malik makbuzas");
(3) absolute occupancy tenants;
(4) occupancy tenants.

2. Save in a few localities where a ryotwari or thekadari system of settlement is in force, every non-zamindari village in the Province is the property of a malguzar or family of malguzars whose rights date from their conferral by Government 30 years ago. They include the unfettered power of transfer. The total number of villages held by malguzars is over 20,000, covering an area of 42,000 square miles, the property of 76,600 persons recorded as shareholders. A certain proportion of the villages have been partitioned, and they constitute 32,700 separate estates.

3. The malik makbuza class consists in the main of ryots whose claims to consideration were recognized at last settlement by the grant of the proprietary status. They also enjoy full powers of transfer. In some districts they are more numerous than in others. They hold altogether over 1,900 square miles, which are distributed amongst 52,741 recorded sharers.

4. The third and fourth classes referred to are tenants of lands owned by malguzars. Absolute occupancy tenants can sell their holdings subject to a right of pre-emption on the part of the malguzar. Occupancy tenants can sell their holdings if the malguzar gives his consent. The numbers of, and area held by, each class are—

Equal power only to 25 and 15 per cent. of the cultivated area held by malguzars.

176,000 absolute occupancy tenants hold 4,010 square miles.

482,000 occupancy tenants hold 9,580 square miles.

Their rents are, speaking generally, very low, and in some tracts subletting is extensively practised.

5. Information regarding the extent to which malguzari rights had been transferred since their grant in the years 1862—1866 was submitted to the Government of India with this Administration's letter No. 1466-S., dated 11th November 1868. It was shown that during the past 36 years about a fifth of the total area had changed hands, more than half of which had come into the possession of the money-lending as opposed to the agricultural classes. In some tracts where the men on whom malguzari rights had been conferred were exceptionally impecunious, transfers had been exceedingly numerous, amounting nearly 30 per cent. of the area. The enquiries which have since been made in the course of settlements have confirmed these conclusions. In one assessment group of the Raipur district, out of 160 villages originally owned by men of aboriginal descent, 71 had been bought up, most of them by a single wealthy

6. Putting aside the political aspect of the question, I do not think then that there are sufficiently good reasons to warrant any interference with the right of transfer which we have granted to malguzars. The malguzars themselves will readily admit that the possession of this right has been of disadvantage to them. But it is the principal insignium of their status as proprietors, and they value this status above all things and would resent as a breach of faith any interference with it. But cases of common present occurrence in the law courts show the expediency of so far modifying the law as to protect the more ignorant malguzars (who are often the best managers of their villages) against being overreached in money transactions, and afford sufficient grounds for the changes in the ordinary law suggested at the end of paragraph 77 of the report—and in particular, for the changes recommended in the fourth, fifth and sixth clauses. If the ordinary law is amended in these particulars, there would remain no adequate ground for special legislation so far as the malguzars are concerned. But if the ordinary law is not amended, malguzars might reasonably be given the benefit of a special enactment enabling the courts to reduce unreasonable interest.

7. Coming now to the case of ryots—including under this term malik makbuzas, absolute occupancy tenants, and occupancy tenants,—the interests involved in transfers are much more serious.

We have unfortunately no complete statistics showing the extent to which these ryoti rights have been transferred in the past, but we are unable to show how far malik makbuza and absolute occupancy rights have been lost by one phase of transfer, that is to say, by transfer to the malguzar of the village. I have not by me complete statistics for the whole area resettled up to date, but the figures for four districts indicate a decrease of from a quarter to a third in the area held in absolute occupancy tenant-right. And this is, of course, exclusive of the transfers to outside money-lenders, which in some places have been very numerous. The extent to which these rights have been alienated in the past is then very considerable indeed. But it should be explained that a large proportion of the transfers to malguzars occurred between 20 and 30 years ago, during the period immediately succeeding the conferral of malguzari and tenant-right at last settlement, when ryots had no proper appreciation of the value of their rights, and were ready to part with them for a very small consideration. At the present time transfers are not so numerous as the figures for the past would lead one to suppose. But there is a steadily working tendency on the part of malguzars to oust these privileged ryots by involving them in debt. No figures are available showing transfers of land held in simple occupancy right, and the gain of this right under the old 12 years rule has been so extensive as to entirely obscure such losses as may have taken place by transfers to the malguzars. The area held in occupancy right has considerably more than doubled during the last 30 years, and this is one of the most satisfactory features of the revenue history of the provinces.

8. The large extent of the indebtedness which prevails amongst these privileged classes of ryots was strongly insisted upon in this Administration's letter No. 915-S., dated 25th July 1888, to the Government of India. The investigations of the past four years have generally confirmed the conclusions then put forward, but have shown that, owing to the immense increase in the value of land which has taken place during recent years, the debts are not so embarrassing as was supposed. The ryots of the Wardha district are amongst the most indebted in the Provinces, and the settlement officer has been collecting detailed statistics on the subject. Three of his rent-rate reports now before me, referring to 174 villages, show that out of 5,526 ryots 2,037 are in debt. The debts of 907 are of less amount than R100; of 476 between R100 and R200; of 462 between R200 and R400, and of 242 over R400. The amounts

are *prima facie* very large for ryots whose annual rents average below Rs. 5, but they are not so much out of proportion to the selling value of their holdings. In the 174 villages to which the three reports relate, 98 ryoti holdings have been transferred by sale during the past 20 years. The rental of these holdings was only Rs2,048, but the selling price was over Rs30,000. The statistics of indebtedness are serious, but not hopeless. Throughout the Provinces a large proportion of the privileged ryots are found to be indebted in amounts which are absurdly out of proportion to their annual payments, but not so much out of proportion to the selling value of their land. The careful investigations which have recently been made into this subject have shown that ryots' debts have but little connection with their rents or the expenses of their cultivation. They are, as a general rule, the result of sheer extravagance and wastefulness. Cases are common when a ryot will admit having spent 20 years' rental on marriages; they are not uncommon when he will admit having spent as much as 50 years' rental. The vast majority of our ryots are quite illiterate and extraordinarily truthful in money matters. The Commissioner's report itself affords a striking indication of this truthfulness in the case to which it refers, where the ryot is content to leave his claims to re-purchase to an oral agreement. Cases are constantly coming to my notice where ryots have been persuaded by their creditors or their maniagars to put their hands to papers of various import, which they later on fruitlessly endeavour to repudiate.

The figures hardly require comment. They indicate how urgently some interference is required with the law as it stands at present.

11. I venture then to submit that the circumstances of the ryots of these Provinces, having powers of transfer, strongly call for the modifications in the ordinary law suggested by the Commission, and would moreover justify special legislation. The report of the Commission seems to show that the Deccan Ryots Act has not prevented a large increase in the number of ryoti transfers, but it seems clear that its operation has on the whole been beneficial to the ryots and affords a reliable basis for general legislation in the ryot's interests. The most valuable provisions seem to be those rendering obligatory the appearance of the defendant, enabling courts to revise mortgage contracts by which profits are taken without an amount in lieu of interest, prohibiting the sale of land in execution of simple money decrees, and empowering the courts to reduce exorbitant interest. Looking to the complicated character of the transaction between money-lender and ryot (advances being generally taken and repaid in numerous small instalments), I have doubts as to the feasibility of resolving them in court in the manner contemplated by sections 12 and 13 of the Act. But the measure deserves a trial.

12. I venture, however, to submit that there is a further step which might be taken short of the absolute withdrawal of powers of transfer. Experience has shown that ryots cannot be trusted to make contingent contracts, and I would disallow all transfers which are based on such contracts and are not voluntarily consented to by the ryot at the time of transfer and registered under proper formalities as such. This would still render it possible for money-lenders to gain possession of land by usufructuary mortgage or by such sales as are referred to in paragraph 38 of the report; and nothing short of the withdrawal of rights of transfer can obviate transactions of this sort. But a limit might be placed of the term of usufructuary mortgages, at the close of which the ryot or his heirs would have the right of re-entry with a clear balance sheet. And it might be provided that the foreclosure of a mortgage would only have the effect of placing the mortgagee in possession of the land for a definite number of years or till the expiry of the current period of settlement, the ryot being disabled from incurring fresh debts to the mortgagee during the period of the mortgagee's possession. I am sensible of the many difficulties which would attend the introduction of such a measure at the present day, but consider that nothing short of it will give the ryots the protection they require during the years which will elapse before they are reached by popular education. One thing is certain, that a measure of this kind would be quite in accord with popular notions. The idea is still firmly rooted amongst the less intelligent classes of these Provinces that the re-settlement of their lands is an occasion of jubilee, when all old debts should be wiped off and all alienated lands restored to their former possessors. I constantly receive petitions from expropriated malguzars and tenants praying for the restoration of their lands, now that settlement has come round. And I am by no means sure that the money-lending classes would be very much opposed to, so to speak, foreclosure by usufruct, instead of by out-and-out transfer, provided that the procedure for obtaining foreclosure was simpler than that now in force. The Commission, in paragraph 73 of their report, refer to a measure of this character which was advocated by Sir William Muir so long ago as 1859, but they are not in favour of it. Their objections appear, however, to mainly rest on the loss it would occasion to the ryots' powers of borrowing, and from my point of view such a loss would be in itself an advantage.

9. Central Provinces letter No. 4423, dated 10th October 1894, paragraphs 41-63.

No. 4423, dated Nagpur, the 10th October 1894.

From—H. Fuller, Esq., I.C.S., Offg. Chief Secretary to the Chief Commissioner, Central Provinces,
To—The Secretary to the Government of India, Revenue and Agricultural Department.

I am directed to reply to your letter No. 1631-191, dated the 7th July 1893, in regard to proposals for the amendment of the Central Provinces Tenancy Act (XI of 1883). In that letter several suggestions were made to the Administration, of which two at least were of a most important and far-reaching character. One of these was to confer occupancy rights on all tenants in these Provinces; the other was the limitation of the right of transfer at present possessed by tenants of the privileged classes. The Chief Commissioner found that he had not before him the information, statistical and other, which would enable him to offer a confident opinion on these very serious issues, and I am to attach a copy of my letter of the 8th October last, in which the Revenue Officers of the province were asked to give all the information on the matter it was in their power to collect, and to give their advice as to the effect on the agricultural community of the several measures proposed.

* * *

41. There remains for consideration perhaps the most important of all the

likely to appreciate an interference, which will undoubtedly lessen the value of their property. Moreover, I am myself sceptical about the possibility of preventing the transfer of rights of this kind, when they once have been placed on a secure legal basis. Accordingly, the Bill allowed the absolute occupancy tenant to transfer his rights, but his power of transfer is not altogether unfettered."

43. Next, as regards the class of conditional occupancy tenants, which under the Act became "occupancy tenants," pure and simple, Mr. Ilbert noted that the section of them which had the strongest and clearest status, were the occupancy tenants of Chanda, Nimar and Sambalpur. Their rights in those districts had been specifically determined under a Resolution of the Government of India, dated the 21st of June 1865. Under this Resolution they were declared "to hold on a tenure, which was described as the customary tenure, and the main incidents of which are as follows:— . . . (ii) the right is transferable to a co-sharer by inheritance or to an heir-expectant . . . (v) the power of sub-letting is restricted." In the rest of the province the rights and powers of the conditional occupancy tenant were by no means so clearly marked, and even in the three districts covered by the Resolution of 1865, the powers of transfer were so restricted as to be almost nominal. In the Bill the Select Committee "restricted the power of an occupancy tenant to transfer his holding to cases where the transfer is made to a person, who would be an heir, or is a co-sharer, or is made with his landlord's consent; and we have provided that his right shall not be sold in execution of a decree. And after various attempts to deal with the difficult question of sub-letting, we have come to the conclusion that it is impracticable to do more than impose on sub-letting the same restrictions as are imposed on transfer in the ordinary sense of the word, that is to say, a tenant may not let without his landlord's consent, unless his sub-tenant is a co-sharer or an expectant heir." The effect of the Act was, therefore, to extend to the occupancy tenants of the whole province the rights that had been recognized in three districts, and to enhance these powers everywhere by giving unlimited powers of transfer *with the landlord's consent.*

44. Lastly, the ordinary or unprotected tenant of the period antecedent to 1883 had *no rights of any kind. His son might succeed him by favour of the* landlord, but he had no right of inheritance. The tenant, therefore, could not transfer. "They have no rights conferred on them by the law or by the terms of the settlement record, except that if they remain long enough on their land they rise under the operation of the 12 years' rule to the status of occupancy tenants." When, however, this tenant without privileges and without protection was lifted to a higher level, he was given, simultaneously with rights of protection against enhancement and ejectment, the right of transfer in his holding. "The whole position is novel and demands novel treatment. . . . Except in respect of the procedure for the enhancement of rent, there is practically no difference between the position of the occupancy tenant and that of the so-called ordinary tenant under the Bill. The rights of the ordinary tenant are heritable and transferable under the same restrictions as those which apply to the occupancy tenant."

45. It thus appears that the powers of the absolute occupancy tenant have been enjoyed unchanged since 1868; that the powers of the occupancy tenant were immensely widened in 1883; and that the powers of the ordinary tenant altogether date from that year.

46. The next point of practical interest is the extent to which the tenants have availed themselves of these powers, and holdings have changed hands. In this matter we have very complete and accurate information.

47. In 1892, by the returns of the Inspector-General of Registration, 97,772 acres of absolute occupancy holdings were sold or mortgaged, 5,165 acres of this having been sold or mortgaged to agriculturists. The total amounts to 3·5 per cent. of the gross area in tenures of this class (paragraph 37 above). If it be assumed, as it safely may, that none of this area was sold without being previously mortgaged, the ratio in which tenures of this class came under encumbrance was 2·9 per cent.; the ratio finally transferred was 1 per cent.

For occupancy tenants the figures are: sold, 21,580 acres; mortgaged, 72,922 acres; total sold and mortgaged, 94,502 acres, of which 10,005 acres were conveyed to agriculturists—rather more than half the transactions were in favour of non-agriculturists. The total of these transactions comes to 1·4 per cent. on the area in occupancy holdings (paragraph 36).

In ordinary tenures the transactions are much fewer, and half of the whole number occurred in two districts. Tenants of this class are not yet conscious of their power. The area sold or mortgaged was 59,619 acres, only 3 per cent. of the area in ordinary tenure, but again, more than two-thirds of these transfers was to non-agriculturists.

48. The number of transfers is perhaps not as yet alarming, even in the class of absolute occupancy tenants, in which it is largest. In the class of ordinary tenants it is inconsiderable. Nevertheless, the number of these transfers is increasing; in all classes the high proportion of transfers of agricultural holdings to non-agriculturists is very significant, and as the people and the money-lenders come more and more to learn the extent of the tenants' right, the process of interest may be expected very rapidly to develop. The Chief Commissioner would draw attention to the striking and important figures which the Settlement Officer of Nagpur has given at page 63 of the accompanying papers. Among upwards of 18,000 tenants, whose circumstances were examined, 15 per cent. were in chronic poverty with their holdings mortgaged, and 60 per cent. were in debt. It is true, as Mr. Fry has remarked, that cultivators in most parts of

evidence of far greater value and weight than the Central Provinces can at present adduce has been presented for their consideration. The evil of transfers from the agricultural to the money-lending-classes has not grown here to dimensions that challenge attention and call for the investigation of Commissions. But the circumstances are identical with those, out of which has grown the present condition of affairs in Bombay and Bengal, and the results of investing the peasantry here with the powers of transfer in their holdings will without doubt be in time the same as they have been elsewhere. The recent Decennial Report on the moral and material progress of India quotes (page 210) the following passage from the latest report of the Bengal Board of Revenue: "In the opinion of the Board the power of transfer of their holdings, which has undoubtedly been increased by the Tenancy Act, is an unmitigated evil from a ryot's point of view, and many ryots are now under-tenants on their old holdings, which have passed into the hands of money-lenders."

51. The Chief Commissioner feels with Mr. Ilbert that in a matter of this sort it is not possible to leave prescription altogether out of account. Prescription is of moment in the case of the absolute occupancy tenants. For nearly thirty years they have enjoyed the whole of the privileges they now possess. The Government of India refused to reduce these privileges, when the proposal was before them at the instance of the local administration in 1883. They believed then that the more improvident of the class had been weeded out, and that those who had survived, belonging as they did to the oldest stock in the province, would guard their rights and preserve their heritages. This anticipation has not been fulfilled. Transfers in considerable numbers still continue. It is true that of the total area of 22,559 acres, which passed finally from absolute occupancy tenants by sale in 1893, only 10,594 acres went into the hands of non-agriculturists, less than a half per cent. on the gross area in absolute occupancy tenure. On the other hand, this class of tenants hold 16 per cent. of the area in cultivation; they are the most important and prominent of the three orders of tenants; and the Chief Commissioner fears that there is little reason to expect that the hopes expressed by the Government of India in 1883 will be more fully realized in the future than they have been in the past. He admits that the case is not a very strong one for reversing the decision of 1883. Still it is his personal opinion that the powers of transfer they enjoy could even now be recalled without practical inconvenience, and that for their preservation in their holdings it is expedient this should be done.

52. In regard to the tenants of the two other classes, however, the case is different and easier. Their powers of transfer practically date in both classes from 1883. These powers have not yet been largely used, and if the Government of India are of opinion that they are harmful, they can be withdrawn or restricted without violent interference with any established custom and practice. But every passing year adds to the strength of the argument of prescription, and increases in rapidly rising ratio the difficulty of any change of administrative principle. The dangers of the situation have had abundant illustration elsewhere, and the statistics show that in the exercise of their right of transfer tenants convey their holdings largely, and will probably convey them more largely to men who have no connection with agriculture.

53. It is the Chief Commissioner's very decided opinion, in the interests of the peasantry, that the powers of transfer granted to the occupancy and ordinary tenants of the Central Provinces in 1883 should be withdrawn, with a saving clause of course in favour of any transactions already completed.

54. The utility of these powers is defended in many parts of the present correspondence on the ground that without them the tenants cannot command

the supply of the capital necessary for agriculture. The way round in these provinces is a theoretical one, for all tenants have powers of transfer. It has a practical answer in the North-Western Provinces, where half the country are occupancy tenants without legal powers of transfer, but who carry on an agriculture which is excelled in efficiency in no part of India. Local experience, such as these is, supports that of other provinces. The Deputy Commissioner of Wardha mentions that in cow-wari tracts, of which he had the management, tenants with absolutely no transferable interest, could still raise all the money they really required. The security given by a transferable tenure encourages those extravagancies in private life, to which the people of India only too readily yield, and the Chief Commissioner thoroughly agrees with the Commissioner of Settlements that, if the effect of a change in the law is to increase the sums available for expenditure upon marriages and litigation, the policy of Government will be completely justified. The effect would first be felt in this direction; its final and real effect would be the preservation to the peasantry of those heritages with which the State endowed them, but which are in peril of passing into the money-lenders' hands.

Transferable tenures encourage extravagance.

55. If that danger is to be avoided, the Chief Commissioner believes that in this matter there is no middle course. If powers are given, any limitations and restrictions we can devise will be evaded. The evolution out-flanked at first of requiring the landlord's consent has proved an obstacle whatever. "The consent is merely a question of price, and the effect is only to transfer to the landlord's pocket some of the money raised by the tenant." If the prohibition against transfer is to be effective, it must be absolute.

Impossibility of restrictions.

for long periods, or the sale of crops in anticipation of harvest at rates very disadvantageous to the tenant. These devices for raising money have not shown themselves in any injurious degree in the occupancy tenures of the North-Western Provinces, and the Chief Commissioner does not apprehend that they would be long or largely resorted to here.

Page 47, collection of papers.

58. The system of partnership, which the Settlement Officer fears would be another method of evading the law, would certainly be a much more dangerous custom if it were introduced. In the Hoshangabad district it has already been invented to overcome the requirements of the present law in regard to the landlord's consent to a mortgage, but if the tenant had no power of transfer, the Chief Commissioner does not understand how the tenant could create a partnership in his holding, when under no circumstances could he transfer a share in it. This, however, is a question of law which the Legislative Department could without difficulty effectually settle.

Idem.

59. There is one other point in this connection which the Chief Commissioner regards as the most complicated of all—the right of tenants to sub-lease. If their tenures are hereditary, there are occasions, as in all hereditary tenures when the occupant is unable to carry on the affairs of his tenure. He may be disabled by old age or disease and have no son to help him, or the tenure may have devolved on a widow or a child. These are circumstances in which to refuse the power to sub-lease would be practically to terminate the tenure, and it seems necessary, in justice, to make some provision for the maintenance of the privilege. Nevertheless, it has been truly said that the right of sub-lease can be turned for all practical purposes into the power of usufructuary mortgage. So real is this danger and so generally understood, that all manner of suggestions have been made for restrictions that are believed to meet the difficulty. The usual proposal is to limit the term of sub-lease, but while some would restrict it to one year, others would allow three, five, or seven years, or even the whole period of the current settlement. Some would simply make void sub-leases in contravention of their restrictions, without any very clear statement of the manner in which these treacherous transactions are to be discovered, or of the arrangements for the cultivation of the holding, when the sub-renter is turned out. Others would make the punishment of misbehaviour the confiscation of the holding. Some would allow the tenant a perfectly free hand in sub-renting within the limits they fix; others insist that the sub-lease should never be made without consent of the landlord. In the report of the Select Committee of 6th September 1882, presenting No. III Tenancy Bill for the Central Provinces, they said (paragraph x) they had allowed sub-letting to occupancy and ordinary tenants only when no fine is paid. "We do not wish tenants of these classes to have the power of raising money on their holdings." For the reasons given in the extract from Mr. Ilbert's speech in paragraph 43 of this letter, that condition was changed to that of the landlord's preliminary consent.

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60. Now it has been shown that the landlord's consent has proved in practice a futile check on the money-transactions of the tenant. In such matters his intervention has not as a rule been for the advantage and good guidance of the tenant. Under a system of hereditary occupancy tenures there may be general good feeling and amity, but when a question of interest arises, the landlord's interests are not, and cannot be expected to be, those of the tenant. Again, it seems to the Chief Commissioner impossible to put a rigid limit of years on the period for which sub-lease may be given,

Seven years will not see an infant grown to manhood, and the remaining term of a current settlement may be but a single year. But the case of the infant occupant is one of the most prominent of the cases in which the privilege of sub-lease may be fairly claimed.

61. The settlement the Chief Commissioner would recommend is the recognition of the right of sub-lease without any formal limit of time in the two cases he has mentioned above and in no other. There is one other case about which he hesitated—that in which a tenancy devolves on an heir who is at the time absent in service. But the Chief Commissioner thinks that in such a case the heir may fairly be called upon to choose between his agricultural inheritance and his new calling. If he prefers the latter, his holding should pass to one of the many competitors for all vacant land.

62. Secondly, he would not require the landlord's consent to the exercise of these rigidly restricted powers, or the entire scheme of restriction will be nullified. But he would authorise the landlord to bring to the notice of the District Officer any breach of these restrictions. Any sub-renter holding in contravention of them should be removed, whenever any crop he has sown is reaped, and if the tenant cannot then make personal arrangements for the cultivation, the holding should lapse subject to any compensation that may be due for unexhausted improvements. It is true that even by this plan the landlord may be bought over to refrain from giving notice, but there is less probability of his connivance, when he has not been consulted in the first instance; a certain check will be given in the annual inspection of the village papers by the Revenue Superintendents; and the Chief Commissioner can suggest no better means of giving a privilege, which cannot in justice be wholly interdicted.

63. These are the views of the Chief Commissioner on the grave questions on which he has been called upon to give an opinion. He feels that apology is due from him for the length of this letter, but it was impossible to set out in short compass the facts and arguments which should be before the Government of India on such important topics, and he fears that even now they have not been given in sufficient detail to make the position always clear. It has been impossible, without carrying the letter to excessive length, to notice and answer the many ingenious suggestions that have been made in the protracted correspondence. For himself he has only to repeat that the further his enquiries have taken him, the clearer has it become to him that no material change is required in the law for the acquisition of occupancy rights, but that it is necessary, if these rights are to be preserved, to recall the fatal gift of the power of transfer at the least in both occupancy and ordinary tenures.

years, it would be undesirable to alter the law except in those particulars in which experience has shown a necessity for amendment. In this conclusion we concur, and we think that the main recommendation of the Local Government that the Act should remain in force substantially as at present in the four districts to which it now applies, must be accepted. As to most of the other recommendations, we are in agreement with the majority of the Government of Bombay. In regard to the retention (1) of a system of revision for the correction of erroneous judgments instead of the ordinary remedy by appeal, and (2) of the Special Judge to carry out that system, the views of the Commission that appeals are preferable to revision and that the Special Judge is not required are no doubt entitled to consideration. But on both points there is practical concurrence between the Government of Bombay, the Judges of the Bombay High Court and the district officers who have been consulted on the suggestions made by the Commission; and the unanimous opinion on this subject of the authorities immediately responsible for the administration of the law appears on the whole to outweigh the views of the Commission. It is accordingly not proposed to make any change in the existing system of revision or in the special agency maintained under the Act.

4. In regard to the other important recommendations for the amendment of the Act discussed by the Commission and the Local Government, we have arrived at the following conclusions:—that section 1 should be amended so as to admit of the extension of the Act to any part or parts of a district other than the four to which it now applies; that the previous sanction of the Governor-General in Council to the extension of the Act should continue to be required, although the Government of Bombay have recommended that this provision be repealed; that the definition of agriculturist in section 2 should be amended as proposed by the Local Government; that the Act should not be restricted to agriculturists' suits only in the area to which it now applies, nor if it is extended to other districts in the Bombay Presidency, should it be limited to agriculturists in those districts (section 3); that in cases under Chapter II summons should be for final disposal as at present (section 7); that the law as to the investigation of the history of transactions with agriculturist debtors should

always be compulsory (section 7); and we think that village registrars might be much improved if the Honourable Mr. Ranade's suggestion to place them under the district officers were adopted. We have expressed our views to the Governor in Council for consideration.

5. A Bill has been introduced in our Legislative Council for the purpose of giving effect to such of the above proposals as involve an amendment in the law, and also for carrying out certain minor alterations in the Act, and a copy is enclosed for your information, together with copy of the Statement of Objects and Reasons and of an extract from the Abstract of Proceedings of the meeting of the Council held on the 29th March, at which the Bill was introduced.

6. The question of undertaking legislation on the main lines of the Dekkhan Agriculturists Relief Act for the protection of agriculturists in other parts of British India will be separately considered by us, and in this connection we may invite your attention to the proposals to amend Act XXVIII of 1855 (an Act for the repeal of the usury laws) and the Indian Contract and Evidence Acts, 1872, which were made in paragraphs 36 and 37 of Home Department Resolution No. $\frac{17\ \text{Judicial}}{1887-1892}$, dated the 20th November 1891, and have been accepted by the Commission and the Government of Bombay. Such legislation, however, will in our opinion only partially meet the difficulties connected with the general problem of agricultural indebtedness, for which remedies of an entirely different kind seem to be indispensable. Among these we are disposed to include measures for further restricting the right of land transfer. But this part of the subject will be carefully considered in our Revenue and Agricultural Department, and we will address you separately concerning it when we have fuller information before us.

7. We would add that the conclusions which have been stated in the preceding paragraphs of this Despatch were arrived at before His Excellency the Marquis of Landsdowne had given over charge of his office.

the Court to require proof of the transaction being entirely *bonâ fide* from that party who had a decided advantage over the other at the time of the agreement. The Government of India added that no Court should be required to go behind a bond, or to open up the past history of a transaction, until some unfairness or inequality had been established or at least made probable. The special Commission supported (paragraph 40 of their Report) these proposed changes in the general law, observing that the principles which they desired to see recognized were that, where the parties to a contract or transaction were not on an equality, the burden of proving not only the good faith of, but also (where it is not admitted) the consideration for the contract or transaction should rest on the party possessing the advantage, and that in the case of written contracts the Court should be empowered to require the party possessing the advantage to prove the consideration by evidence independent of the document. These amendments of the law were also approved by the Bombay Government in paragraph 24 of its letter No. 1477, dated 8th March 1893 (submitting observations on the recommendations contained in the Report of the special Commission).

4. Action has now been taken upon other points connected with the amendment of the Deccan Agriculturists' Relief Act; and the Governor General in Council desires to obtain the opinion of Local Governments and Administrations on the changes above suggested in the general law of British India. Criticism of the wording of the draft provisions contained in paragraph 37 of the Resolution of 20th November 1891 is not at present desired. To recite here the substantial changes of law under consideration, they are—

(i) To amend the law regarding usury so as to make it clear by a specific enactment to this effect that the Courts, before awarding stipulated interest, shall be bound to enquire as to coercion, undue influence, fraud, or misrepresentation, wherever there is a reasonable suspicion of any of these; and to provide in the Contract Act that the taking an undue advantage of a debtor's simplicity or necessities shall, equally with the above causes, render an agreement voidable.

(ii) By additions to the Evidence Act, to enable the Court to require independent evidence of the transaction if it disbelieves or doubts the recorded consideration, and likewise to require proof of *bonâ fides* from the party who contracted when in a position of decided advantage.

5. I am to ask that after obtaining the views of (and of such other officers) as† (1) may wish to consult,† (2) will favour the Government of India with † (3) opinion on the matters above set forth.

Madras—*the Honorable the Chief Justice and the Judges of the High Court at Madras.
Bengal—*such officers.
North-Western Provinces and Oudh—*the Honorable the Chief Justice and Judges of the High Court at Allahabad and the Judicial Commissioners of Oudh.
Punjab—*the Judges of the Chief Court, Punjab.
Central Provinces—*the Judicial Commissioner, Central Provinces.
Burma—*the Recorder of Rangoon and the Judicial Commissioners of Upper and Lower Burma.
Assam—*such officers.
Coorg—*such officers.
Hyderabad—*the Judicial Commissioner of the Hyderabad Assigned Districts.
Madras (1)† the Government of Madras
(2) His Excellency the Governor in Council
(3) his
Bengal—(1)† the Government of Bengal
(2) His Honour the Lieutenant-Governor
(3) his
North Western Provinces and Oudh—(1)† the Government of the North-Western Provinces and Oudh
(2) His Honour the Lieutenant-Governor and Chief Commissioner
(3) his
Punjab—(1)† the Government of the Punjab
(2) His Honour the Lieutenant-Governor
(3) his
Central Provinces, Burma, Assam, Coorg, Hyderabad—(1)† you
(2) you
(3) your

(Not to Punjab, Burma and Coorg.)

6. The High Court, Calcutta, has also been consulted on the subject

17.—Coorg letter No. 599—95-91, dated 2nd April 1894.

From—Major C. W. RAVENSHAW, I.S.C., Secretary to the Chief Commissioner of Coorg.
To—The Secretary to the Government of India.

In referring to the correspondence marginally noted, I am directed to address you on the subject of the alienation, under certain circumstances, of Jama Bâne lands in Coorg, a question which has been pressed upon the attention of the Chief Commissioner ever since he has assumed charge of his present post. Before stating the questions that appear to call for the consideration and orders of Government, an attempt will be made, in the next succeeding paragraphs, to explain briefly (i) the nature of Jama Bâne land; (ii) how they have been acquired; and (iii) the conditions under which they are held.

Letter from the Government of India to Chief Commissioner, No. 1070 R., dated 6th December 1883, paragraphs 1 and 2.
Letter from the Chief Commissioner to Government of India, No. 1110-151, dated 27th November 1884, paragraphs 11, 12 and 13.
Letter from the Chief Commissioner to Government of India, No. 6, dated 21st December 1890.
Letter from the Chief Commissioner to Government of India, No. 335-23, dated 20th February 1892.
Letter from the Government of India, No. 1225—10, dated 29th June 1892.

2. In 1834, when Coorg was annexed, it was found that every holding called a "Warg," *i.e.*, wet land suitable for rice cultivation, had a block of adjacent forest attached to it for the object of giving the owner sufficient pasturage for his cattle, leaves and manure for his soil, and firewood and timber for his use. These forest attachments, called 'Bânes,' were held free of assessment and were not to be cultivated.

3. Land in Coorg is held under two different systems of tenure known respectively as 'Jama' and 'Sagu.' Holders under the Jama tenure pay half the assessment levied on Sagu ryots in consideration of certain services rendered to the State. The Bânes attached to Jama 'Wargs' are known as 'Jama Bânes.'

4. After the introduction of coffee cultivation into Coorg, the Bânes attached to rice Wargs were, contrary to the then accepted usage, planted with coffee and attained a value far in excess of the Wargs themselves. Applications were accordingly made by the ryots for Bânes, as an easy means for obtaining forest land that might be made available for coffee cultivation.

5. When attention was drawn to this misuse of Bânes, coffee cultivation was found to have been carried out in them to such an extent, that is prevention became almost impossible, and after much correspondence and consideration, certain orders relating to Bâne were issued by the Chief Commissioner in 1873, permitting the cultivation of ten acres with coffee, free; but assessing any excess over this area, at the usual coffee rate.

Vide Chief Commissioner's Proceedings, No. 749—54, dated the 26th February 1875, embodying Notification No. 11, dated the 11th October 1872, sent to the Government of India with letter No. 751—35, dated the 21st October 1879, paragraph 11.

6. The proportion which the Bâne should bear to the Warg does not appear ever to have been definitely fixed in former times; but enquiry showed that custom had fixed the extent of Bâne at double the area of the Warg. The actual extent of Bâne acquired has, however, in most instances been dependent on the influence of the Warg holder, or the favour of the official deputed to measure and make over the land, with the result that, where the configuration of the land permitted, Bânes are frequently found to be far in excess of double the area of the Warg to which they were assigned. The recent survey has disclosed many very glaring instances of laxity in measurement of Bânes.

Vide correspondence forwarded with letter to Home, Revenue and Agricultural Department, No. 754—24, dated the 21st October 1879.

(II) Ballachandra Nanjappa's case is that at a private partition of his family property, certain rice fields with their Bánes (on one of which there is a garden,) fell to his share. His creditors having obtained decrees against him, have been attaching and selling the produce of his fields and garden, year by year, leaving him nothing but a bare maintenance.

If he could sell the garden on his Jama Báne he could clear his debts and continue to cultivate his rice. At present, he is hampered with land he cannot afford to cultivate, and yet he cannot give it over to people who could.

(III) Another case is that of Kenchia (a Jama Ryot in Haradur), who prays that he may be permitted to sell one out of his four Bánes attached to his Jama rice field of five acres. His only living relative, besides himself, is his son, who also wishes to sell. The three Bánes which will remain to him, if he is allowed to sell one, are thirty acres in extent—more than ample for the service of his rice field. His debts amount to R850 for which he is threatened with imprisonment in the Civil Jail. For the Báne he wishes to sell, he could get R1,000 which would clear him. Under the present rule, he cannot sell and must go to prison and be disgraced, while valuable coffee land must remain an unprofitable jungle.

11. The Chief Commissioner, I am to say, by no means proposes that all Jama Bánes should be allowed to be alienated, but only Báne which is proved to the satisfaction of the Commissioner to be in excess of what is required for the service of the Warg, and in view of removing what appears a real hardship recommends for the sanction of the Government of India the following modification of the existing orders regarding Jama Bánes:—

I. *To be held inalienable.*

(a) The ten acres of cultivated Báne which are allowed to be held free of assessment.

(b) Uncultivated Báne of double the area of the rice Warg to which it is attached.

II. *To be alienable provided the sanction of the Commissioner is obtained.*

(a) Cultivated Báne land in excess of ten acres, which pay full rates and are in name only Jama.

(b) Uncultivated Báne land in excess of double the Warg area.

12. The Chief Commissioner would further recommend that all uncultivated Jama Báne land which may be alienated should be at once assessed at 4 annas per acre till opened out with coffee, when coffee assessment should be imposed.

attempt to stop transfers in such cases. *A.* sells his annual *patta* to *B.* this year, and leaves the land altogether after paying the year's revenue, or coming to some arrangement with *B.* for its payment. When the land comes to be re-settled next year, *A.* cannot be found, and *B.* is found in possession. The result is that *B.* gets the next *patta* made out in his name as a matter of course, and in this way the transfer is effected. There is, however, nothing to prevent the Deputy Commissioner from refusing to settle with *B.* if he chooses, but in practice he never does refuse. The practice is precisely the same, Mr. Ward believes, in Burma.

4. In *Sylhet* the temporary settlement-holder never had any clearly defined rights in his land until the *Ilam* Rules of 1876 were issued (paragraphs 143 to 150 of Mr. Ward's Note). These rules and the *ilam-patta* conferred upon him the right of transfer, but subject to the veto of the Deputy Commissioner. In Jaintia (which is a part of the Sylhet district) the right of transfer was first conferred on the settlement-holder in 1877 by the Government of India, subject to the right of veto by the Deputy Commissioner (paragraph 160 of Mr. Ward's Note). Prior to this he had no defined rights, and under the Jaintia *Raj* he certainly had no rights whatever.

The rights of all settlement-holders in Sylhet and Jaintia have now been defined in the Assam Land and Revenue Regulation. They are precisely the same as those of similar settlement-holders in the Assam Valley.

5. The history of the rights of the old *mirasdars* of *Cachar* is given in paragraphs 104, 114 to 117 of Mr. Ward's Note. Before the Land and Revenue Regulation was passed, the rights of these settlement-holders were never clearly defined or recognized. Now they, as well as the new *mirasdars* (paragraphs 118 to 120, 125 and 126 of Mr. Ward's Note), have had the same rights conferred upon them by the Land and Revenue Regulation as have been granted to settlement-holders of the same class in the Assam Valley. In the Surma Valley Settlement Rules, which have been recently sanctioned by the Government of India, the right of the Deputy Commissioner to veto transfers in Cachar is reserved. No such right was reserved in the old *pattas* (Appendices 9, 10, 11, 12 to Mr. Ward's Note).

6. In conclusion, I am to refer you to paragraphs 194 to 203 of Mr. Ward's Note, in which, after completing his review of the history of the different classes of settlement-holders in Assam, he proposed that their rights in the land should be clearly defined by legal enactment. This view was finally accepted by the Government of India, and the right of transfer was first conferred by the Legislature on all settlement-holders in Assam by the Assam Land and Revenue Regulation.

5. It will be observed [section 6 (2)] that before any settlement can be approved by the Governor General in Council it must be proved to his satisfaction (1) that the settler is entitled to all the property proposed to be comprised therein, and (2) that he is at the time possessed of other property more than sufficient to pay his debts in full. The first of these provisions would compel partition to be made in the case of a family under the *Mitákshara* law before a settlement could be effected personal to the title-holder and his descendants; and the latter should, with due provisions as to publication (which it would be our care to make by means of rules to be framed under section 8), be sufficient to prevent fraud upon the creditors. If, however, any settlement once sanctioned by the Governor General in Council is afterwards successfully impugned on the ground that the points required by section 6, sub-section (2), have not been satisfied, it will be open to the Government, in virtue of rules to be made under section 8 (*c*), to provide for setting it aside.

6. The draft may call for revision in minor points, which will come under review, should it be introduced, in the stage of Select Committee. But we are agreed as to its main principles. We are well aware of the economic objections which may be urged against the grant of power to create perpetuities; but those objections, we believe, apply rather to the state of things existing in Europe than to that which obtains in India, which is still economically some centuries behind the condition of the United Kingdom; and even if they are partially applicable to this country, the political advantages of enlisting on the side of British power the influence of the great hereditary leaders of the people are, in our judgment, sufficient to outweigh the considerations adverse to the proposal which are based on economic grounds. With these observations we beg to apply for Your Lordship's sanction to the introduction of the measure in the Legislative Council of the Governor General.

4. Your Government have remarked in the letter of January last that the principle of the Bill has met with a large measure of acceptance among the persons consulted, who are chiefly officials, but the papers show that it has also encountered strong opposition in many quarters. I observe, too, that the approval expressed by many of the best authorities is of a very qualified nature, and that it was only the original draft that was referred to them, whereas the scope of the measure has now been materially enlarged. Thus the Lieutenant-Governor of the Punjab confines his approval to so much of the Bill "as concerns hereditary titles granted by Government," which, he says, "are so very rarely granted that there is no room in their case for the ordinary objections to allowing a settlement of property in perpetuity." And, similarly, the Chief Commissioner of the Central Provinces states his "*objection to the wholesale* creation of perpetuities," would confine the measure to titles which have been "granted *or recognized* by the Government of India as an hereditary distinction, and only assents to the policy of the Bill in the anticipation that applications under *it will* not be numerous. In the North-West Provinces and Oudh the balance of opinion seems decidedly unfavourable. The Lieutenant-Governor considers that the State has little or no interest in the maintenance of modern families, but "sees no objection" to the proposed measure where hereditary titles have been given; the Judicial Commissioner of Oudh is not in a position to express an opinion as to its expediency; Mr. Justice Burkitt and the Commissioners of Kumaon, Meerut, and Agra have entered strong protests against it; Mr. Justice Tyrrell and the Commissioners of Rohilkhand, Benares, and Allahabad do not appear to be much impressed in its favour; while the Board of Revenue understood that they were not to discuss the general question of policy. In other provinces also there is considerable divergence of opinion, and I would refer in particular to the forcible dissent of Mr. Nolan, a Commissioner in Lower Bengal. Of the Native authorities consulted, the Muhammadan Literary Society "are of opinion that the principle of the draft Bill is opposed to the policy of the Muhammadan law;" while among Hindus, it was stated by *an eminent Hindu lawyer* in the discussion on the Petit Baronetcy Bill, "the right to prevent the unrestricted transfer of property exists, if it can be said to exist at all, in a most attenuated form." Moreover, it must not be forgotten that the persons most likely to be injuriously affected by the introduction of a tenure analogous to *that of an entail—the cultivating class, on the one hand*, and, on the other, future generations of the families enjoying a title—are unable from the nature of the case to put forward their views regarding the probable consequences.

5. Your letters admit that your proposals are open to certain economic objections, but you consider that these are outweighed by the great political advantage of enlisting on the side of the British power the influence of the great hereditary leaders of the people; and you are also influenced by a desire to prevent the disintegration of large estates, and the ruin of the old aristocracy, by the operation of the law of inheritance or the action of the money-lenders. These are also the objects on which Sir Charles Crosthwaite lays stress; but, as already stated, he does not think that either of them will be secured to any appreciable extent by such a measure as that which is proposed. In your Government's earlier letter, dated 5th April 1893, you expressly declined to extend it to others than title-holders, however important their estates may be, and although their families may have been in enjoyment of these estates for many generations. A title is nowhere defined, and I am aware that in India it is not always an easy matter to determine whether a title is or is not rightly claimed or possessed. If this Bill were to become law, your Government might find difficulty in refusing to the large and ancient zemindars the privileges which it gives to title-holders, but the present proposals fall far short of